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The Tax that Breaks the Street Car's Back

Valuation as the basis for rate regulation is now the law of the land—but valuation as a basis for utility taxation is an economic error that now threatens the very existence of the street railway industry. This article tells us why, and points out what can be and should be done about it.

BY LESLIE VICKERS

IT would be unusual to find any business, industry, or utility that does not believe it is unjustly taxed.

It is becoming the rare exception to find one industry that cannot support, by adequate statistics, its claim to unbearable taxation. In this respect the electric railway industry does not differ from other industries—except that in the case of the electric street railway companies the additional charge can properly be made and is made that its taxation is discriminatory and arbitrary as well as unduly burdensome.

THE broad, general statement is often made that the electric railways pay in the neighborhood of ten per cent of their gross in direct taxes and in imposts which are peculiar to them as an industry. But those who deal with the subject of taxation will readily realize that very little information is contained in this statement unless at the same time it be related to two other factors; namely, the net in-

come of the industry and the unit price of the service which is rendered by it.

THE basis of taxation which is in almost universal use throughout the United States for this industry is the *ad valorem* system. There will be little need to point out the difficulties inherent in determining the "valuation" of an electric railway utility for taxation purposes, when we have had so many glaring examples of the difficulties involved in "valuation" for rate-making purposes. There is no subject in the whole public utility field more alive than the latter, and the recent report of the governor's committee in the state of New York shows how far apart trained minds can be on this subject, notwithstanding the guiding decisions of the United States Supreme Court.

In one or two states, notably Connecticut and California, an attempt has been made to obviate the difficulties involved in the *ad valorem* system by introducing the method of taxing street railways on their gross revenue. It can be said that this method has worked out well in Connecticut—where a tax on the gross revenue takes the place of all other local and state taxation—but not so well in the state of California, where the need for a reduction in the rate is now apparently being recognized by the legislature.

Nor can it be said that this method is highly scientific or free from grave objections. There are many of our street railways whose gross revenue is large, but whose operating expenses, due to the nature of their business, are also very high and leave little margin for the payment of taxes. The size of a corporation or the size of its business measured in the number of dollars that it receives is not necessarily any measure of its ability to pay, nor is it necessarily any measure of the special privileges which its patrons enjoy, nor of the cost of policing and governing the property. But at least it can be said that progress has been made in these two states by abandoning the concept of valuation as the determining factor for taxation.

Again, some states such as Wisconsin have come to recognize net earnings as the chief factor in determining valuation under their *ad valorem* system, with the result that in that state we have some electric railway properties taxed on less than one-sixth of their book valuation and others taxed on almost 100 per cent.

IT is a recognized principle of public utility operation that taxes may be included as operating expenses. This necessarily follows under the regulatory system which has been adopted almost universally and under the provision of a limitation to a fair return, either on investment or valuation. Therefore, whatever taxes are imposed are intended to be paid by the user of the utility and not by the owners thereof. Some modification of this statement needs to be made, of course, in connection with Federal income taxes which, however, form only a small part of the taxation of this industry.

It is true that the electric railways pay about ten per cent of their gross earnings or gross revenue in taxes and special imposts.

This means theoretically, at least, that for every dime deposited in a fare box, one cent goes to government of one kind or another.

And if, after paying this cent out of every dime to government there is not enough left out of the receipts to pay reasonable dividends to the holders of common stock, it then becomes a burden, first on the investor in preferred stocks, if there be such, and ultimately upon the bondholder. Little more than personal financial injury can come when only dividend payments are withheld but when the bondholders are similarly affected it means that the business must be run on capital, so long as it is run, or by curtailment in equipment, in repairs, or in service, all to the detriment of the public.

IN the electric railway field for the past decade or more little sympathy has been shown for the stockholder, common or preferred. The idea was prevalent that there was considerable water in the stock, and the idea still prevails in some quarters.

But whatever water may have been there prior to the war and the period of rapidly rising prices was successfully squeezed out, and it can confidently be stated that at the present time this industry, on the whole, is remarkably free from such excess of stock. Whatever the rise in prices failed to do in this direction was successfully performed by the regulatory commissions and by the managements and owners of the companies who were most anxious of all to place the business on a secure foundation with freedom from possible criticism from a public upon which it depends for good will and patronage.

It has been the business of the writer to study the financial set-up of many companies in the electric railway field and of many industrial manufacturing and commercial companies as well, and he feels secure in the statement that with very rare exceptions, the electric railway industry cleaned its financial house before the beginning of the last decade.

If this be so it is high time that more consideration be given to the neglected group of investors, the legal owners of a utility subjected to regu-

The Enormous Tax Burden of the Utilities

¶ "PUBLIC *utilities as a group pay a larger percentage of their net income in taxes than any other class of corporations doing business in the state. . . . At one extreme stand the telephone and telegraph companies paying 16.2 per cent of their net income in taxes, while at the other extreme stand the electric railways. Those included in the study* (*and they were only those that were operating* AT A PROFIT) *paid an average of 44.4 per cent of their net income in taxes.*"

(FROM THE REPORT OF THE SPECIAL JOINT COMMITTEE ON TAXATION AND RETRENCHMENT OF THE STATE OF NEW YORK, 1922.)

lation of services, rates, and earnings, devoted exclusively to public service, and supplying an essential service for the conduct of a city's business. In many cases it is the burden of taxation which has meant the difference between the payment of modest dividends and the continual and monotonous passing of them. In some cases it has been the burden of taxation that has rendered the company insolvent and caused a cessation of the very services for which the utility was called into existence.

When this has happened the goose that laid the golden tax egg has been killed at the same time.

THE conclusion that electric railways were being harshly taxed in the state of New York was expressed in the strongest possible language by the Special Joint Committee on Taxation and Retrenchment of the state of New York appointed in 1919 and reporting after three years of painstaking work on March 1, 1922.

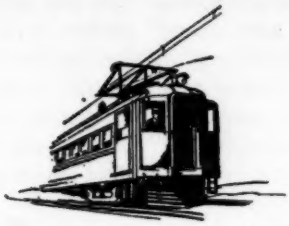
This committee, which consisted of three members of the senate and three of the assembly, was under the chairmanship of Frederick M. Davenport of Oneida. The research staff was a notable one, headed by Professor Robert Murray Haig of Columbia University and including Professor Fred Rogers Fairchild of Yale University, the present president of the National Tax Association. It had, as special advisers, Professor Edwin R. A. Seligman who has done probably more research work in the field of taxation than any other living man; Professor Charles J. Bullock who ranks close to Seligman in this field; and the late Delos P. Wilcox whose hostility to privately owned utilities was well known. This committee reported as follows (pages 104–105):

> "That public utilities as a group pay a larger percentage of their net income in taxes than any other class of corporations doing business in the state is clear from this comparison (given earlier in report). In part, this burden is heavier because of the fact that, from the very nature of the services rendered, more real property is employed by this class of corporations than by business corporations generally. The figures given indicate, also, how pronounced are the inequalities between the different public utility groups. At one extreme stand the telephone and telegraph companies paying 16.2 per cent of their net income in taxes, while at the other extreme stand the electric railways. Those included in the study (and they were only those that were operating *at a profit*) paid an average of 44.4 per cent of their net income in taxes. Many of these companies bound by a fixed low rate of fare, *have been literally taxed into bankruptcy.*"
>
> (The italics are the writer's).

THE three tables given in connection with this statement and reproduced on the following pages, are enlightening.

Summed up, their conclusions are as follows:

Public utilities in the state of New York pay a higher per cent of their net in taxes than do other businesses; the electric railways pay the highest rate amongst the utilities; this rate in many cases has been the cause of bankruptcy. Besides this, it should be borne in mind that no account was taken of the various imposts such as paving charges, snow cleaning, street lighting, snow removal, payment of



RELATION OF TOTAL STATE AND LOCAL TAXES TO NET INCOME, ELECTRIC RAILWAYS IN NEW YORK STATE

Based upon the Average Annual Tax Payments and the Average Annual Net Income during the Period 1911–1920

Class [1]	Number in class	Number showing deficit	Percentage of net income paid in taxes—Number paying: Less than 50 per cent	50 per cent to 99 per cent	100 per cent to 149 per cent	200 per cent to 249 per cent	250 per cent to 299 per cent	600 per cent to 649 per cent
A	10	3	4	2	1	..	..	..
B	27	8	10	4	1	..	3	1
C	19	11	4	1	2	1	..	..
Total	56	22	18	7	4	1	3	1

RATIO OF AGGREGATE STATE AND LOCAL TAXES TO AGGREGATE NET INCOME, PUBLIC SERVICE CORPORATIONS OPERATING AT A PROFIT

Class of utility	Number of corporations included	Ratio of taxes to net income (expressed as a percentage relation)
Steam railroads	87	27.3
Electric railways	34	44.4
Telephone and telegraph	62	16.2
Gas and electric	97	23.0

RATIO OF AGGREGATE LOCAL TAXES (SPECIAL FRANCHISE AND GENERAL PROPERTY, TO AGGREGATE NET INCOME

Public Service Corporations Operating at a Profit, 1911–1920 (Excluding Corporations Showing a Deficit)

Class of utility	Number of corporations included	Ratio of aggregate local taxes (special franchise and general property) to net income (expressed as a percentage relation)
Steam railroads	87	24.60
Electric railways	34	38.05
Telephone and telegraph	62	12.10
Gas and electric:		
Electric light and power	45	21.0
Gas and electric (combined)	19	24.6
Gas (manufactured)	15	22.9
Gas (natural)	18	10.3
Total gas and electric	97	20.50

[1] Class A corporations are those with operating revenue of $1,000,000 or over. Class B those with operating revenue from $100,000 to $1,000,000. Class C those with operating revenue less than $100,000.

the salaries of traffic policemen, free transportation for policemen, firemen, city officials, postmen, and other items, reduced fares for school pupils, maintenance of public parks, and other like burdens which taken together represent a staggering contribution by the street car riders, through the operating companies to the communities they serve.

Two questions now arise. The first is as to whether the situation in New York state has improved in the years that have elapsed since this drastic criticism and comparison of the electric railway burdens in New York state was made.

One would have thought that remedial legislative action would have followed immediately but such has not been the case and the electric railways, are, if anything, worse off in the matter of taxation now than ever before.

The second question is as to whether the state of New York is typical of the rest of the country.

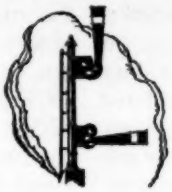
It is the writer's frank opinion that it is not, and that there are few other states where the tax burdens on this industry are so heavy or where the tax situation is so bemuddled, so archaic, and so indefensible as in New York. But from this it must not be concluded that the tax burdens are light anywhere. Unfortunately we have had few investigations of an official character comparable with that in New York; but those that have been made in California, Utah, Wisconsin, Maryland, and elsewhere all show a heavy tax burden on electric railways and most of them show a high degree of tax discrimination unfavorable to this industry. The writer had the privilege of making a tax survey in the state of Wisconsin and the figures presented to the special interim committee on taxation of the legislature disclosed a far greater burden on the electric railway industry than on any other industry in that state. Since that time, 1927, even greater burdens have been added instead of relief given.

THE trouble is that taxation and regulation have not gone hand in hand.

The New York State Committee stated on page 111:

> "Public control of rates conditions the problem in a fundamental manner. The true function of a public utility tax under these circumstances is to supplement rate regulation."

But what has really happened is that our companies have been made to serve two functions—one to supply local transportation service, and the other to act as tax gatherers. There is no possible justification for the second and no hope of carrying out the first satisfactorily while the second is insisted upon. Yet the states and communities in which we operate guard jealously the prerogatives of another day and age and, while limiting the amount of money we may obtain, insist on an exorbitant proportion of it for themselves. There would be less objection to this procedure if we had remained a monopoly or if we constituted an industry in which substitution of services was difficult. But we are not now a monopoly. We are in a highly competitive field where one cent added to an established price may and often



UNITED RAILWAYS & ELECTRIC COMPANY
Taxes and Public Charges

	1929	1928	Increase or decrease
State and city taxes:			
Real estate and personal	$389,795	$390,679	$884
Baltimore-Sp. & Chesapeake Railway	4,115	3,683	432
Income bonds	10,633	10,590	43
Park tax	1,089,178	1,058,564	30,614
Gas tax	3,485	3,543	58
Pole tax	278	280	2
Street car tax	5,250	5,250	00
Railway trucks and chauffeur licenses	960	974	14
Minor privileges	42	42	00
Conduit rental	84,866	80,866	4,000
Total	$1,588,602	$1,554,471	$34,131
Per cent—Operating revenue	9.50%	9.55%	
Federal taxes:			
Bond interest	$23,165	$27,734	$4,569
Income tax	82,000	35,181	46,819
Total	$105,165	$62,915	$42,250
Per cent—Operating revenue	.63%	.39%	
Indirect taxes:			
Snow and ice removal	$27,264	$30,911	$3,647
Paving	160,085	141,188	18,897
Total	$187,349	$172,099	$15,250
Per cent—Operating revenue	1.12%	1.06%	
Grand total	$1,881,116	$1,789,485	$91,631
Per cent—Operating revenue	11.25%	11.00%	

does drive away passengers to seek an alternative method. The history of fare increases is a discouraging one. In almost all cases traffic has been lost and sometimes to such an extent as to make the new schedule of fares less desirable than the old. We cater in the main to the poorest group in society, those who do not own or use their own automobiles, and to them a small increment in cost of transportation service, paid out as they go to and from their work, is of great economic consequence. We must be able to sell our service at a price that people are willing to pay, and it is futile to include taxes in operating costs if by so doing the price of the service is made unattractive to those who should use it.

In a word, our high taxes make high costs; high costs make higher fares; higher fares make fewer riders; fewer riders make higher costs—and

so the vicious circle goes. Besides this, one might elaborate on the detrimental effect of increased costs on service and this in turn on the riding habit of the public. You cannot have at one and the same time high taxes, low fares, and adequate service in any modern urban transportation system. And surely, adequate service and low fares are of more consequence to a community than the collection, from the car riders, of high taxes.

CAN we ever expect to achieve regulation of taxation to the same degree that we have regulation of rates and earnings?

Is not one as logical as the other? Should not the transportation services of the public be protected against unreasonable taxation just as much as the public is protected against unjust rates?

Fair rates plus fair taxation equal good service.

A typical case of a company being forced to seek higher fares in large measure by reason of high and discriminatory taxation is that of the United Railways & Electric Company of Baltimore, Maryland. Their taxes for the two years 1928 and 1929 are given below together with the percentages of operating revenue and the increases or decreases as between these two years. (See table on preceding page.)

What a heavy tax burden this statement discloses—11.25 per cent of the total operating revenue! More than one cent for every passenger on the 10-cent cash fare basis in vogue in that city!

But that tabulation only shows the tax burden on the total operating revenue. When we come to consider the net (before fixed charges and taxes) a still clearer idea of the burden is shown, for this company in 1929 paid approximately 35 per cent of its net in taxes! And this is a company which has striven to institute every variety of economy, has been well and efficiently managed, and has done almost everything humanly possible to widen the gap between net and gross.

Should not the car riders themselves rise up and demand, as the most interested parties, that a closer approximation to justice and sanity be arrived at?

Unfortunately, the car rider is unorganized. There is no one to speak for him and he must remain inarticulate except for those efforts which the transportation company makes in his behalf. And when it does so it is accused of selfish motives and its pleas are discounted.

THE Baltimore Company illustration is interesting for another reason. In 1929, it paid in excess of a million dollars—the entire fares of ten million passengers on a cash basis —for what is called a "Park Tax." The company is obligated to pay 9 per cent of its gross collected on public streets for the maintenance of city parks.

Can anyone find a logical connection between a street car rider hurrying to his work or home from his office and a public park?

The automobile rider may, at least, in some cases, direct his movement so that he will drive through a park and enjoy it, even to the extent of parking his machine there and enjoy-

ing the flowers, the trees, the birds, and the air. But the street car rider merely hurries by it. Why should he be singled out to pay for its upkeep when the user of electric lights, of power, and of gas, as well as the patrons of theatres, the consumers of ice cream, and the smokers of cigars are exempt?

The writer believes that there is no more glaringly indefensible tax than this one in any city and yet the serious efforts of years past to remove it have been fruitless. In a neighboring city, Washington, D. C., the nation's capital, the electric railways still pay the salaries of crossing policemen stationed at street railway intersections —a condition that prevails in no other city that the writer knows of—in spite of the fact that the services rendered by these officers to automobilists and foot passengers is greatly in excess of any service they can possibly render to the street cars.

Why should not this burden be shifted from the shoulders of the street car patron?

A RECITAL of all of the indefensible taxes and forms of taxes imposed on street railways in the United States would present an imposing list, much too lengthy to set forth here. Many of them are time-honored as in Baltimore and Washington, and they have been the means of saving so much taxation for other interested groups within these cities that a suggestion for their removal meets with an outcry of protest.

The fault lies in the systems of taxation, inherited in part from other days and other customs patched from time to time with new forms of taxes as the various governmental bodies,—state, local, school districts, lighting districts—needed money. It is as inapplicable to a regulated industry today as the horse car would be to serve the rapid transit needs of a great metropolis. It is the *ad valorem* system that generally prevails and its condemnation has been thoroughgoing from the pens of tax experts and economists for many years.

UNDER the heading "Defects of the Present System," the New York committee, on page 96ff of their 1922 report, stated:

> "New York's taxation of public utility corporations is not a unified system based upon any recognized principle. It has grown up historically by piecemeal legislation applied at different times to different classes of corporations. The result violates nearly all the canons of sound taxation."

Three charges are made against it —first, that it lacks certainty; second, that it is arbitrary; and third, that it lacks simplicity.

> "Certainty requires that a tax be based upon and measured by certain

¶ "WE ARE *in a highly competitive field where one cent added to an established price may and often does drive away passengers to seek an alternative method. The history of fare increases is a discouraging one. In almost all cases traffic has been lost and sometimes to such an extent as to make the new schedule of fares less desirable than the old.*"

definite indices, which should be matters of fact readily ascertainable by both the taxing officials and the taxpayer. Determination of the amount of tax due from any taxpayer should not be a matter of personal judgment. No matter how upright and efficient the taxing officials, no matter how willing the taxpayer to contribute his fair share, taxes based on judgment and opinion are sure to lead to inequality and suspicion."

Not only is there a wide variety of opinion on what constitutes valuation —the basis for the *ad valorem* tax— but in the very nature of the business, and, indeed, of most public utilities, there exist enormous difficulties in assessing the value, on any basis, of wires, poles, conduits, and tracks.

As to the charge that the system is arbitrary, this naturally follows in the wake of uncertainty, and an arbitrary principle, as in the case of the New York franchise tax, is bolstered up by further arbitrary refinements all adding to the uncertainty.

The third charge is lack of simplicity, or in other words, complexity.

> "No tax ought to be so complicated as the general-franchise tax on steam railroads, etc. There is no need of so many different taxes or so much difference between the several classes of corporations. The lack of simplicity is a heavy burden on taxing officials. It is a burden and a source of annoyance to the taxpayers. *It defeats equality and justice!*"

The committee further pointed out that it is only the net proceeds from a tax which enables the government to perform its services and that complexity causes waste and is "a dead loss."

Now and again there appears a legislative effort to recognize the unfairness of the taxes on street car riders and to give necessary relief. In the state of New Hampshire, for instance, in 1919 a law was passed giving special consideration to street railways. This law was recently contested and upheld in the courts. Section 1 reads:

> "Any corporation owning or operating a street railway property within this state, which is incapable under proper management of earning sufficient money to pay its operating expenses and fixed charges, including taxes and excluding interest on its indebtedness, and to provide for the necessary repairs and maintenance of its properties and adequate reserves for depreciation thereof, may be exempted from the payment of taxes to the extent and subject to the limitations of this act."

Such a provision is of value to a common carrier and is in a sense an approach to regulation of taxation referred to earlier. It is also a wholesome recognition of the essential nature of the street railway's services and indicates the willingness of the state to relinquish its rights to tax rather than lose those services.

But a much more scientific step was taken by the legislature of the state of Connecticut in 1919— when it did away entirely with the old system under which its electric railways were taxed and substituted one under which they pay 3 per cent of their gross "in lieu of all other taxes." Under a pro rata scheme the local communities receive their fair share. The *value* of the property has passed out of consideration, and the business is taxed on its volume.

Some of the Absurd and Unfair Burdens that Street Railway Companies Must Bear—

They must pay the salaries of crossing policemen:

They must pay for the upkeep of municipal parks:

They must pay for street lighting from their trolley poles:

They must pay for street sprinkling and even street sweeping:

They must pay for snow removal for the benefit of vehicular and pedestrian traffic generally:

They must pay for pavement between and around their tracks—a relic of horse car days when the animals actually wore out such street surfaces.

The same method is in vogue in the state of California, though in this case the tax is 5¼ per cent of the gross with the possibility, under certain circumstances, of an additional *ad valorem* tax being charged.

While, in the opinion of the writer, the gross tax is a step forward from the *ad valorem* method it is not the final step. Ability to pay is not measured either by value or volume of business, for it is conceivable that a public utility may do a huge business and yet be losing money in serving the public at the established rates per unit of service. A much fairer criterion would be to tax regulating utilities on their net, and in this event, taxation would serve its rightful purpose of supplementing rate regulation.

In criticism of this method it has been pointed out that all corporations, whether profitable or not, should contribute to the fixed expenses of the state for police and other protection, for government, and other items, and that a small gross tax would serve as a measure of this indebtedness. Accordingly, there has been evolved a scheme which appears to have much merit, called the "gross net" method of taxation. It applies the principle of rent to franchises and measures the value of the latter by the proportion which the net bears to the gross. It imposes "a varying rate on gross earnings, the variation in rate depending on the relationship of net to gross, the companies paying high taxes as their profits increase, and lower taxes as they decline" (See *New York Special Committee Report*, page 116).

To make the terms explicit the committee suggested that "gross earnings be defined as all receipts from the operation of a public utility and that net earnings be defined as net earnings from the operation of a public utility after deduction of operating expenses and taxes assignable to operation except special franchise taxes in this state and the gross net tax itself."

THE following rates were suggested to apply to the state of New York and were designed to bring into the state treasury almost the same amount of money as now paid by the utilities as a whole.

"Every company shall pay an annual tax which shall be based on gross earnings and which shall be the percentage of gross earnings fixed herein:

Net earnings in per cent of gross earnings	Per cent of gross earnings to be paid as tax
When less than 5	1
Between 5 and 10	1¼
Between 10 and 15	1½
Between 15 and 20	1¾
Between 20 and 25	2
Between 25 and 30	2¼
Between 30 and 35	2½
Between 35 and 40	2¾
In excess of 40	3

This method of taxation has met with great approval from economists and tax experts and was endorsed by the National Tax Association, which is the highest deliberative body on this subject in the country. It is strong in all the points where the *ad valorem* system is weak—it is certain, it lacks arbitrariness, and it is simple. Under the modern accounting systems which practically all public utilities follow, the net, as defined, can be determined with almost as great accuracy as the gross, and tax evasion, as well as padding of accounts, is rendered very difficult. It merits the serious thought and attention, not only of all operators of public utilities but of all regulatory commissions and legislators.

In an address on the subject of taxation delivered by Professor Edwin R. A. Seligman of Columbia University to the members of the taxation committee of the American Electric Railway Association on December 10, 1926, he said:

"Therefore, gentlemen, I would close by saying that both from the point of view of prudence, with reference to the future, not the immediate situation now but the situation as it is going to develop in the next five or ten or fifteen years, and from the larger point of view of what is fair and equitable and forward-looking for the community as a whole, you ought to get behind this gross-net proposition and do away with all the absurd things in our laws today, including the special franchise tax. If you do this, and approach the subject fairly and logically, you will be able to help solve both the state and the local tax problem and you will achieve something that will ultimately redound, not only to your own benefit but to the prosperity of the community as a whole."

In this view the writer most heartily concurs. He sees in its adoption the end of wrangling over tax valuation, the end of discrimination as between utilities and classes of utilities, the end of special privileges, on the one hand, and oppression, on the other, and the establishment of a fair and equitable system under which the utilities will pay for their franchises just what they are worth. It is an end worth hoping for and worth working for.

ONE last word needs to be said about those pseudo taxes which we term imposts—paving charges, street cleaning, sprinkling, and other charges.

The paving charge is a relic of the old horse car days when our horses or mules wore out the pavement, and it was right that we should be under obligation to repair it. But now our electrically propelled vehicles do not need the pavement. Indeed we would be much better off without it for it invites the automobile and truck traffic which does so much to slow up our progress, and yet, in only five states have we been given complete relief from this paving burden. Few citizens of our communities seem to realize that there are many cases in which we are obliged to pave the whole area between the rails, and 12 to 18 inches on each side. There are some cases in which we are obliged to pave the whole street where we have car tracks. Let it be remembered also that crushed stone no longer suffices as in the days of the old-fashioned horse cars, but we must install paving of the kind called for by the heavy trucks and automobiles that use our highways at the present time.

Again the question is asked, why should the street car patron pay for something which benefits him not at all, and relieve, by his generosity, the user of the automobile and the abutting property owner? This kind of tax burden falls in the wrong place; it penalizes the group least able to pay; it excuses from taxation those to whom the benefits accrue.

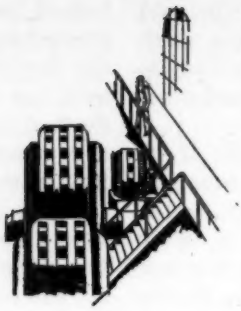
The solution of the street railway problem is not a matter for the operators alone—it is something in which our private and business citizens as well must become interested if we are to preserve our local transportation systems and render them healthy and serviceable.

Arbitrary Rules that Bind Utility Companies—but Not Private Companies

MANY regulatory requirements seem arbitrary and unjust when applied in individual cases; but sometimes they are necessary for the public good, as reflection will reveal.

A traveler, for example, calls at the ticket office of a railroad company and asks the price of a round-trip ticket to and from a certain city. The agent, in good faith, makes a mistake and quotes a lower price than that on file with the commission. The traveler, likewise acting in good faith, buys the ticket. Afterwards the railroad discovers the mistake and insists upon the payment of the difference between the price charged and the legal rate. If the railroad were engaged in private business, it would not have a chance to recover; but being engaged in the public service it can.

The reason is that the law permits no deviation from the legal rates. This law is for the protection of the public, because infractions of the rule might easily lead to grave abuses. So individual interests must yield to the public welfare.



A Unique Experiment in Rate Regulation

How one electric power company is solving the problem of reducing its charges to its customers by a system of profit sharing that is stimulating the good will of the ratepayers—and paying dividends to the stockholders.

By AARON HARDY ULM

On New Year's Day, 1930, all the electric light and power customers in the nation's capital of Washington, D. C., received a New Year's gift. It was a very tangible and useful gift which took the form of a 10 per cent reduction in rates.

More interesting still is the fact that this was the fifth consecutive gift of its kind. Furthermore, Washingtonians will receive another such gift in 1931, and probably still more as time passes.

The net result of all these concessions to date gives Washington the fourth lowest primary lighting rate in the country for all classes of service, and the very lowest rate for communities served by steam plants—4.7 cents per kilowatt hour. And Washington's current is generated entirely from steam; it does not have even the partial advantage of cheap hydroelectric current.

A peculiar feature of this perennial rate-cutting habit of Washington's electric utility is the fact that it is obtained by a system. The reductions are automatic. It all came about back in 1924 as a result of a regulatory experiment entered into by agreement between the utility and the District of Columbia Public Utility Commission.

Under this plan, regulation of electric rates is virtually automatic. For the last six years the relations between the company (the Potomac Electric Power Company) and the commission have been frictionless. So have been the company's public re-

lations. Even the ubiquitous newspaper contributors who sign indignant letters with such names as "Constant Reader" and "Pro Bono Publico" have been quiescent if not actually pleased.

Finally, the company has been making money in the face of these successive reductions. And nobody complains of the company's prosperity, for as the revenues increase the rates go down still further.

So, for the time at least, everybody appears to be happy and "all is quiet along the Potomac."

BEFORE we analyze this noble experiment in electric rate making, it might be well to give credit to the author of the plan. It is almost astonishing how little he is known. If one were to ask a dozen Washingtonians, basking in the sunlight, or rather electric light, of cheap power rates and good service, who was responsible for the profit-sharing plan now in effect between the company and the commission, ten would probably reply:

"*What* profit-sharing plan?"

In other words, while the Washingtonian may know he is getting low rates, he does not know why and probably does not care. But just let the rates go up and see how quickly he will want to know why!

Anyhow, the man who first thought of the plan will probably not miss the glory. It came in his line of duty for he was one of Uncle Sam's army engineers—and like mostly all army engineers, he is probably more interested in getting a job done than worrying about credit for it.

Nevertheless, this military gentleman was Major W. E. R. Covell, former assistant engineering commissioner for the District of Columbia. Washington, it must be remembered, is governed by three commissioners. The law says one of them, the engineering commissioner, must be from the Army Engineer Corps.

Furthermore, the members of the District Public Utilities Commission, as constituted in 1924, were really the three District commissioners. They just met under another name, but the same faces were present. Thus it was that the Major, as assistant to the engineering commissioner, had long been entangled in the numerous rate controversies between the Potomac Power Company and its Washington consumers.

In fact, so numerous had been these clashes prior to 1924 that the battle might still be under way if the profit-sharing plan had not been adopted.

ONE day during a particularly trying series of attempts to agree on rates, returns, and valuations, this army engineer spoke to his confreres substantially as follows:

"Let's all get around a table and settle this muddled dispute. Let's begin by tossing all technicalities into a waste basket and by putting thumbs down on legal quibbling. The company naturally wants to make money; the public wants lower rates. By the application of a little common sense, both of these ends can be achieved; in fact, they can be made interdependent."

"How?" inquired his official associates.

"By an arrangement so simple that a statement of it will sound foolish,"

he replied. "Let the power company go ahead and make all the money it can on the condition that earnings above a reasonable return on the value of its property be shared with its customers."

"How?" again inquired his associates, who were mindful of the difficulties of detail in the way of refunding small sums to the company's 100,000 or more patrons, an outstanding one of them being Uncle Sam himself.

"By letting rates be adjusted automatically at the beginning of each year in accordance with the company's earnings during the preceding year," the military man replied. "Let the company keep the total of each year's profits, whereby it ever will be spurred to lower costs and thereby rates. This gambling element will be the motivation of a beneficent circle, helpful of and protective to both the company and the public."

Such is the essence of the plan agreed on. And in five years rates went down more than 50 per cent, the company doubling its business and increasing its average rate of retained net earnings. For the last year of the period there was paid on its common stock a dividend of about 22 per cent, while its customers got electric energy for not much more than half the cost that would have been entailed by rates prevailing prior to the period.

THIS plan is not without complications. Its background reaches to the day of Thomas A. Edison's pioneering in the field of incandescent lighting, as the Potomac Electric Power Company's original establishment was one of the first of the kind to be set up anywhere. Although it was a success practically from its beginning, the company's establishment always has been a wholly local entity. It has no producing or distributing affiliations with any other and is, as such establishments now go, comparatively small.

All of its common stock is owned by the Washington Railway & Electric Company, now of the North American Company's public utilities group. The Potomac Electric Power Company produces all the electric energy that enters commercial channels in the city of Washington and the national capital's near-by environs on the Maryland side of the Potomac river. Its territory is a non-industrial one, and its outlets are of kinds made possible by a city that is predominately residential and wherein office work is the only major industry.

For a long time this and other District of Columbia public service companies were subjected only to such regulation as the Congress of the United States imposed directly and fitfully from time to time. The Congress is both state legislature and municipal council for the capital, for which a public utilities commission was established in 1913.

THE commission was directed to find the value of public service company properties that were put under its supervision, and it, of course, was given power to establish fair and reasonable rates of charges for services. The three District commissioners were also the members of the utilities commission until 1927 when Congress provided for a separate

Four Reasons Why the Rate Experiment Is Regarded as Successful:

1. *The rates have been automatically reduced every year since the plan was originated:*
2. *The primary lighting rate is the lowest in the country for energy generated from steam:*
3. *The electric company has been making money in the face of the reductions, paying 22 per cent dividends on common stock last year:*
4. *Nobody complains of the company's prosperity because the more money the company makes the more the rates are lowered.*

member-personnel. All are appointed by the President.

The utilities commission blithely plunged at once in the mysterious sea of valuation proceedings, being, like everybody else at that time, unaware of the depths and cross-currents of that ocean of unsolved questions. With charming *naïvete,* as the French say, it soon proclaimed a finding as to the "true" value of the properties of the Potomac Electric Power Company. The primary lighting rate in Washington then was 10 cents a kilowatt hour. On the basis of its finding as to valuation, the commission ordered a reduction to 8 cents.

Then, in 1917, began a controversy that in 1924—seven years later—apparently was no nearer settlement than at its start. The company disputed the commission's valuation finding, which, said the company, was 30 to 40 per cent below what it should have been. Usual issues were involved—such as the question of original cost and reproduction worth. Claiming that, on the basis of its contention as to the value of its properties, the 8-cent rate would be confiscatory, the company took the matter into the courts, where it remained, in more or less suspense, as the years plodded by.

The courts directed that, pending final adjudication, the company impound collections representative of the difference between the old rates actually in effect and the rates decreed by the commission. This was with the view of excess charges being refunded to consumers in case the courts finally sustained the commission. The impounded fund amounted to about $6,500,000 when the controversy finally was brought to an end

by the round-table adjustment in 1924 already described.

WHEN the commission was created by Congress, some one put a certain clause into the enabling act. This consisted of a few words by which the commission was specifically authorized to adopt sliding scale systems of rates after what long had been in vogue in Boston, Massachusetts. Major Covell was the first to see in that authorization a way out of the dispute about light and power rates and the underlying question of valuation.

Largely on his suggestion, members of the utilities commission called into conference the officials of the power company and made an offer of compromise. The power company officials accepted it and, with the court before which pended the litigation acting as a sort of arbiter, an agreement was achieved.

Under that agreement the company got most of what it contended was the value of the property used by it in performing its public service. A base value of approximately $32,500,000 was allowed. It was agreed that the company should have a return of 7½ per cent on that, plus additions that should be made, under the commission's supervision. Depreciation was put on a modified straight-line basis. When the depreciation reserve is below 15 per cent of the value of the property, plus additions, a rate of 2.3 per cent applies; when the reserve is 15 per cent, the rate is 2.1 per cent; if the reserve further rises the rate may go to as low as 1.3 per cent when the reserve is 20 per cent, the maximum allowable.

One half of the fund impounded between 1917 and 1924 was made returnable to the company's customers, the rebating being in ratio to each of the latters' total antecedent payments to the company. Thus to patrons of the company there was paid back a total of more than $3,000,000.

IT was agreed that when earnings during a year are above 7½ per cent there will be, automatically, a reduction of rates for the following year in the extent of an equivalent of one-half the excess, all of which is retained by the company. If the average return during a consecutive 5-year period is less than 7½ per cent, or during a 3-year period it is less than 7 per cent, or for a single year less than 6½ per cent, an upward adjustment of rates contemplative of a 7½ per cent return is in order. There has been no occasion for an upward adjustment so far and none is expected.

Agreed-on rates for 1925 were based on a primary charge of 7½ cents a kilowatt hour, with a minimum charge of 75 cents a month, for household lighting, this being a reduction of 25 per cent. Other rates were reduced correspondingly.

THIS agreement had one distinctively unique phase; customer benefits resulting from it were assured by it to that portion of the public that was outside the geographical or other statutory jurisdiction of the District Utilities commission.

The valuation agreed upon included the company's stations and lines in Maryland, as the business done by them was of the interstate kind. Additions to its Maryland facilities like-

wise have been included in subsequent rate bases. It was agreed that the company's customers outside of the District of Columbia should be beneficiaries of all reductions of rates.

The Potomac Electric Power Company always had been notably energetic in the merchandising of its product and progressive in the maintenance and expansion of facilities. But the agreement gave marked stimulation to it in those respects.

DURING the past five years the installations of meters had increased at a rate of about 9,000 annually, and its sales of energy at a rate of about 12,000,000 kilowatt hours a year. In 1925 it installed 18,296 new meters, and its sale of current increased in the amount of 26,000,000 kilowatt hours, or about 18 per cent. In the period of 1925–29, inclusive, its annual sales of current jumped from 146,727,534 kilowatt hours to 281,262,210, an almost 100 per cent increase. This is attributable partly to extension of lines into new area, mostly newly developed suburban localities, but the greater proportion of the increase was because of larger per capita consumption in the areas served.

At the same time the company invested about $17,500,000 in new and additional facilities, virtually replacing its old producing equipment with new, a progressive lowering of producing costs resulting. Coal consumption per kilowatt hour dropped from 1.74 pounds—which is under the present average for the country—in 1924 to 1.375 pounds in 1925; the latter is close to the present lowest ratio. The producing cost went down even more and is now, with possibly a few larger-scale operations excepted, the lowest for steam generation and much lower than the average for water-power generation in the country.

FOR many years the power company has owned land abutting what is known as Great Falls on the Potomac river a few miles above Washington. The land was purchased with the view of developing the large volume of water power that passes over huge boulders lying in a gorge, the rapids constituting one of the most picturesque natural phenomena south of Niagara. There is, recurrently, much agitation for transforming the falls into an electrical power enterprise; a great deal of the agitation

The Successive Rate Reductions that This Profit Sharing Has Brought About:

1925 - - - - -	*7.5*	*cents per kilowatt hour*
1926 - - - - -	*7.0*	" " " "
1927 - - - - -	*6.25*	" " " "
1928 - - - - -	*5.9*	" " " "
1929 - - - - -	*5.2*	" " " "
1930 - - - - -	*4.7*	" " " "
1931 - - - - -	(*A further reduction is anticipated*).	

has a government ownership enterprise in view.

Officials of the Potomac Electric Power Company declare that it would be useless to thus mar a fine bit of scenery that belongs essentially to the people of the country, especially as they have proved that electric energy can be produced by steam power more cheaply than by this water.

Since 1924 the company's net earnings in excess of 7½ per cent have ranged from a low of $675,790 in 1927 to about $1,320,000 in 1929; those for 1928 having been near the last figure. One half the excess is translated annually into lowerings of rates, and the company's primary charge for current sold for household lighting has declined as indicated by what these rates have been during the period of the profit-sharing agreement, is as follows:

In 1925, 7.5 cents; 1926, 7.0 cents; 1927, 6.25 cents; 1928, 5.9 cents; 1929, 5.2 cents, 1930, 4.7 cents a kilowatt hour.

"The consumers of the Potomac Electric Power Company will save $660,000 in 1930 through the reductions just made, and present computations show that our customers, both domestic and commercial, at the new rates effective in 1930, will pay $4,500,000 less during the year (1930) for their electric current than they would have paid at rates prevailing in 1924," said William F. Ham, president of the company, in his last annual report.

Thus it is not difficult to understand the purport of the following passage in a report of a recent hearing before a congressional committee:

> "SENATOR BINGHAM: Mr. Ham, have any of the local organizations, like the board of trade or any of the neighborhood associations, passed any resolutions of protest against the operations of your company and its charges?"
>
> "MR. HAM: No; not that I know of."

WHAT of the aftermath yet to come, such, for example, as that attaching to the prospective arrival at rock bottom in the matter of consecutive lowering of rates?

Nobody ventures more than a vague guess. Its officials are of the opinion that the company probably will continue to earn, during at least several years more, above the allowed 7½ per cent base return—on a descending scale probably but yet sufficiently to carry rates down materially below present levels. Some of the attachés of the utilities commission think that something like rock bottom will be touched within the next year or two.

What will be the public reaction to static, even though low, rates, or, to a reversed trend of earnings productive of rate increases?

Nobody knows.

But so far the profit-sharing arrangement has been, from every point of view, a success. Yet other public utilities companies and commissions have not been falling over themselves in any rush to copy the plan. Folks in position to know say that nothing quite like it is in vogue elsewhere.

But perhaps that will come later.

A Public Utility Monopoly Is Not Guaranteed

THE modern policy of a "regulated monopoly" of public utility service is somewhat misunderstood by the average consumer of utility service.

It is often thought that in return for the right to regulate the companies are guaranteed protection from competition, and in addition to that are guaranteed a reasonable return on present value of their property.

The state, of course, does not guarantee this return. It merely lets the utilities earn it if they can.

It does not protect them from competition with other services which might be substituted for the utility service. If, for example, a gas company wants to introduce gas for household heating, it must compete with coal and oil. If an electric company wishes to put electric refrigeration in the homes it must reckon with the ice man.

Neither does our modern policy of regulation guarantee freedom from competition of utilities of the same kind. It protects the existing utility in order to prevent duplication of costly facilities in the interest of better service and lower rates. It protects the established company only so long, however, as the company behaves itself and fulfils its duty to the public.

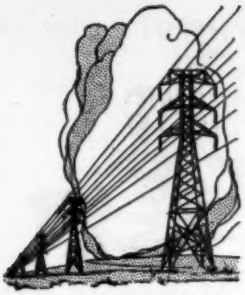
The company has no inherent right to protection. The protection can be withdrawn at any time the state wishes. This protection is a matter of legislative discretion not renewable by the courts. No constitutional barrier stands in the way of a return to the old competitive method of transacting utility business, if the state should at any time desire to change its policy.

The California commission recently allowed competition in the ferry business on the ground that the established ferry was rendering inadequate service. The supreme court of the state, on a review of the commission order, said that the state had never gone to the length of guaranteeing monopoly in all cases, but had at all times deemed the public interest as of paramount importance.

The Supreme Court of the United States has held that the power to regulate is not the power to destroy; but this has been applied to the effect of regulation on the company's income. Rates must not be so low as to amount to confiscation. The Constitution protects the utilities at that point.

But there is nothing in the Constitution as the court said which guarantees any right to monopoly. The discretionary powers of the commission to admit competition of like utilities in the utility field is, therefore, a most powerful deterrent against misconduct. The public is well protected against any abuses which might flow from preventing competition in the case of like utility services in the same field.

Henry C. Spurr



The Public Utility that Is "Misunderstood"

The part that is played by the public relations counsel in guiding the corporation's policies in the attainment of its objectives.

By EDWARD L. BERNAYS

PUBLIC relations is not a mystery. It embraces every contact a utility, (or any other organization or individual for that matter), has with the public or any part of it. Every printed or spoken word, every act, every product or service that goes to make up the public concept of a public utility, is part of its public relations.

The behavior of the public toward the organization is the result of those impressions.

Public preference for a public utility may mean an informed good will that will accept a justified rate raise or service charge. It may mean using more of the commodity. It may mean more investment of capital. It may mean legislation helpful to the utility. It may mean granting franchises and charters. It may mean prompt payment of bills. It may mean reasonable demands for service.

SINCE a utility is concerned with the public's attitude, it needs to know and to act on important principles:

1. There are psychological principles behind all behavior. He who would influence or attempt to control behavior needs to understand these principles.

2. Behavior is reciprocal. The public attitude towards an organization reflects the organization's attitude toward it, and that attitude must be expressed in acts, not mere words. The public must be definitely guided and influenced toward the desired actions.

3. The public is not a mass; it is a series of interlocking groups with varying motivations and there is a definite technique of moulding different groups toward an end.

To apply these principles correctly, the organization must be clear as to its own objectives. It must keep constantly aware of public trends which

affect it so that it can set out instantly to modify its behavior to conform to the trends or to modify the trends if they run counter to its purposes.

It is obvious that the desire of a utility for quick profits might dictate one policy; the wish for permanent good will another; the need of more capital a third; the necessity to avoid ruinous competition a fourth, and so on. In practice, it generally happens that there are several objectives and that a technique is adopted which reconciles procedure toward all of them, with emphasis placed according to relative importance.

With the policy established, the next important thing is to adhere to it. It should be modified only as objectives shift.

There are public utility executives who think that a sound public relations policy is merely getting favorable articles into the newspapers to build good will or to assuage the public's anger.

That is not a public relations program any more than the paint on a house is the architecture. Deeper than that, a real public relations policy starts at the root of the organization's corporate life and deals with basic principles and practices. It starts on the inside and carries through to the outside. The public may only see the surface; the policy goes through to the core.

It is essential that the policy suffuse the entire organization, from the decisions made at the directors' conference table to the man who reads the meters. Unless we have complete understanding of the corporation's ends and some one to see that everyone and everything are in harmony in working towards those ends, the picture the public gets is muddled.

Since public support is the key to all forms of corporate success, the importance of getting and holding public support is paramount for a public utility and public contacts cannot be permitted to be haphazard.

The need for skilled shaping of such a policy, and the necessity for guidance of specific actions to make the policy effective, have created the profession of "public relations counsel."

As an intermediary between the public and the organization, he interprets each to the other. Being independent—neither too closely involved in the details of his client's business nor isolated from its interests—he acts as an impartial observer and advisor.

The public relations counsel's recommendations and activities depend on many factors. As the public mind varies, the procedure must be varied. Economic, social, and political forces react on the public at large, on separate groups, on communities; and public relations policies and actions must keep in step.

Thus, it becomes the task of the counsel on public relations to observe, analyze, and interpret the public's state of mind to his client and advise the client to modify its behavior accordingly and to shape the public's attitude toward his client.

The public relations counsel must know the groups of which the public is composed. He must know how to resolve any community into its component groups. He must take

into consideration group leaderships and evaluate the degree of influence that such leaderships exert over the followers. It is necessary to know the special interests of these groups and to devise methods to reach their attention and cause their action. The public relations counsel must then direct his appeals on these bases.

If the public utility has been misunderstood in whole or in part by its public or parts of it, he starts the work of education or reëducation. If the client has been at fault in old avoidable practices, he points the way —*first,* to modification, and *second,* to reflection of that modification to the public. Again, if the client wishes to embark on new practices, he sets about gaining awareness of and acceptance for these.

How can these things be done? First of all, by bearing in mind that the competition for attention is fierce and keen, that the public is often lethargic except towards its own interests and that it responds slowly and tepidly to abstract ideas—but swiftly and warmly to events. He must have a clear idea of what the public wants and will accept, a practiced knowledge of how to fit acts and utterances, impressions created by his client to those deep-rooted reactions of the public.

To dramatize his client to the public in furtherance of the client's specific objectives, he must lift its particular ideas and acts above the mass. He must do for the idea, or the event chosen to propagate it, what the newspaper headline does for the news story.

It must be easy for the public to pick out the issues. The forcefulness with which they are set forth, the soundness with which the appeals are launched along the lines of proven response, establishes the degree to which they will overcome the normal tendency of the people's attention to flicker to other things. Every arrow must be aimed sharply to pierce barriers of indifference.

To do this, the public relations counsel must create news, not merely news of a sort, but news which states his client's message in terms of action and ideas appealing strongly and directly to interests of the public. And he must know how to create good will under auspices of authority that will give the necessary momentum.

Fine shadings of emotion and reason are not understood by the people. The appeal must be expressed in facts, lifted from the whole subject, and developed into events so that they can be readily grasped.

No two clients, even within a given field such as public utilities, ever have precisely the same problem. Very often skilled, quick attack can solve a problem; again prolonged and intensive work is necessary so that a drive can be made toward the objectives for a prolonged period and through every avenue of approach—the newspaper, the magazine, the radio, the moving picture, the pamphlet, the letter, the lecture platform, the cartoon, the natural group cleavages of society, and others specially applicable to a given situation.

The tremendous advances in the mechanical transmission of ideas have created a condition where the conflict for attention becomes continually greater and greater. The counsel on public relations helps industry to secure the attention it needs.

Remarkable Remarks

L. H. Robbins
Newspaper columnist.

"The political orators open the campaign. Simultaneously the American Gas Association meets."

Gifford Pinchot
Governor-elect of Pennsylvania.

"Utilities are issuing orders to their employees to vote against Pinchot, under threat of discharge."

Ed Howe
The "Sage of Potato Hill" in Kansas.

"The evidence is that while democracy is always popular, it is rarely honest in public affairs, and never efficient."

C. M. Ripley
Of the General Electric Co.

"Each average United States factory worker uses three times as much horsepower as each British factory worker does."

Joseph B. Eastman
Interstate Commerce Commissioner

"Intellectual dishonesty is the bane of our political life. It probably ranks higher in this respect than financial dishonesty or stupidity."

A. B. Walton
An accountant of North Olmsted, Ohio.

"The late P. T. Barnum, even in his prime, was an amateur and a piker compared with some of our utility executives in attempting to feed the public with bunk."

Bernard J. Mullaney
Vice President, Peoples Gas Light & Coke Co.

"None but the blind, the deaf, and the dumb are justified in doubting the existence of organized effort in this country to change the character of our government in its relation to all business and industry, and make the United States a socialistic nation."

Edward Keating
An editorial in "Labor."

"Chicago gangs are running riot now because the community has been corrupted and debauched for years; and the chief agents in that debauchery are the public utilities and the newspapers."

Judson King
Director, National Popular Government League.

"The cold official record of the past nineteen months proves that this administration, aided by a few power-trust Democrats, is just as much opposed to honest regulation as to public ownership."

Excerpt from petition filed by Boston Central Labor Union.

"The public is entitled to compensation by way of reduced rates for services rendered in the form of physical exertion in becoming nonpaid telephone operators through installation of the dial system."

RICHMOND B. KEECH
People's Counsel for the District of Columbia.

"I am informed by officers of the Stop Me and City (taxicab) concerns that they intend to start a barber shop to give shaves, haircuts, and shoeshines to their drivers free and a lunchroom to sell them food at cost."

MATTHEW S. SLOAN
President, New York Edison Company.

"Those who are engaged in the submetering and resale of electricity within our franchise territory to thousands of tenants who would otherwise be our customers, are now objecting to our proposals for reductions in rates to our customers."

HERBERT HOOVER, JR.
Radio technician.

"The airplane will open a new era in transportation economics, and in so doing it should aid, not hamper, all the older transport mediums. The reason is that speed has always produced more travel, and increased travel aids all transport systems."

WILLIAM E. RING
Washington, (D. C.) journalist.

"Rumor now has it that the power trust is plotting to send a beautiful blonde hireling down to Governor Huey Long with instructions to demand nothing less than the chairmanship of the Louisiana Public Service Commission."

MARTIN J. INSULL
President, Middle West Utilities Company.

"The proponents of government ownership and operation are never interested in those things in which the individual has failed. What they want are those institutions of which individuals have made outstanding successes."

ROBERT CRUISE MCMANUS
Magazine writer.

"By a change in the personnel of the public utility commission, Governor Franklin D. Roosevelt succeeded in altering its character from that of a judicial and largely useless body to one charged with representing the public against private interests."

W. ALTON JONES
President, National Electric Light Association.

"It behooves the electric light and power companies everywhere to take notice of public disapproval, whether warranted or not. Where it is unwarranted, it is incumbent upon us to answer the unfair attacks which caused unfavorable opinion. Where the disapproval is warranted, we must correct the mistakes which prompted such disapproval."

What Is Unconstitutional About a Fixed Rate Base?

THE EDITORS' FOREWORD

IN the July 10th issue of this magazine, Dr. John Bauer, the well-known utility rate expert, expressed his views on "The Fixed Rate Base: Why Is It Unconstitutional?" In the November 13th issue, Mr. William M. Wherry, the noted authority on constitutional law, answered Dr. Bauer in his article "Is a Fixed Rate Base Constitutional?" Here is Dr. Bauer's reply to the points raised by his friendly adversary in this editorial debate.

BY DR. JOHN BAUER

FOR the purpose of centering discussion upon the legal questions involved in establishing a fixed rate base, in my previous article, I proceeded with the assumption that the present undefined and variable rate base as represented by "fair value" is not suitable for the purposes of regulation, that a fixed rate base is essential to make rate making financially sound and effective from the administrative standpoint, and that this would protect alike both consumers and investors in public utility properties.

On the basis of this assumption, Mr. Wherry concedes the correctness of my legal analysis that a law establishing a fixed rate along the lines that I proposed, would not be unconstitutional, in the following words:

> "Of course, if a statute were in fact essential to the making of rates and actually protected the rights of both consumers and investors in public utility properties, there would be nothing unconstitutional in such legislation."

Exactly!

We come back, then, to the questions of fact, whether systematic rate making is practicable under the present undefined and variable "fair value" rule, and whether a fixed rate base is not essential to sound financial regulation and effective administration in the interest of both consumers and investors. As a paraphrase to my assumption, Mr. Wherry says:

> "Assume that the legislature fixed the rate base, which became unfair to the customers and also unfair to the company. Is there any reason to suppose that the courts would not declare it unconstitutional?
>
> "It is only when a statute is not fair, either to the customer or to the

company, or to both, that the constitutional question arises."

Again, exactly!

As an economist, I feel gratified to have a lawyer of Mr. Wherry's standing agree with me on constitutional law. Where we disagree, therefore—if indeed we disagree at all—is on basic economic facts involved in the policy of rate making.

IN this problem of rate making we face these fundamental questions:

(1) Can rate making be effectively administered under the present undefined and variable "fair value" standard?

(2) Does that standard preserve financial stability either during rising or falling prices?

(3) Does it provide systematically for the expected returns to the investors through all shifts in price level?

(4) Does it make available consistently the new capital as needed in the interest of industry and the public at large during periods of falling as well as rising or stable prices?

I have already given the answers in my previous articles in this magazine, and I have set out the facts fully in other publications as well.[1] Not to repeat, I merely state now that as to every one of these basic questions, the facts stand inexorably against the present undefined and variable "fair value" as rate base. This standard fails to comply with any reasonable *criteria* for satisfactory rate control.

Conversely, I submit that the fixed rate base that I have proposed would measure up to every requisite of desirable rate regulation.

I SHOULD start in each instance with the existing properties, and place a present fair valuation upon them, giving due regard to the fact that the amount would be permanent, not subject to further variation, and that it would be fully maintained and conserved in the interest of the investors in so far as rates could be made high enough for that purpose.

This initial valuation would be placed upon the books of the company as a permanent figure for the existing properties, and to the amount would be added actual additional investment in improvements and extensions. The properties would be fully maintained out of operating expenses, including adequate provision for depreciation. The amount of the rate base would appear at all times as a definite quantity, beyond dispute, on the books of the company, under continuous commission supervision.

The rate of return on the initial valuation would be placed at a reasonable but fixed amount, probably 7 per cent in most instances, with adjustments according to special circumstances, and then upon subsequent investments there would be allowed the actual cost of money as required in the issuance of securities as new capital is needed for the expansion of the properties.

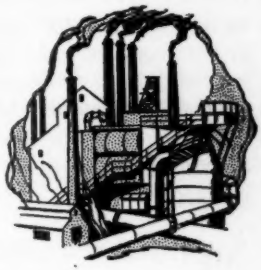
LOOK back upon the *criteria* of a desirable rate base.

First, under the proposed plan, rate making would be capable of systematic administration; without dispute and litigation over valuation and re-

[1] See "Adjusted Actual Costs," PUBLIC UTILITIES FORTNIGHTLY, May 2, 1929; "Valuation Yardsticks," *idem*, April 3, 1930; for comprehensive discussion, see "Effective Regulation of Public Utilities," (Macmillan, 1925).

If a Fixed Rate Base Were Established by Statute

"If a fixed rate base as proposed were established by statute, and if the plan were recognized to embody a fair objective standard, and, therefore, constitutional, then there would not be any subsequent increase in value, nor decline, whatever the changes in purchasing power of money or the shifts in price level. This is the economic fact . . . which is fundamental to proper consideration of the constitutional consequences that would follow the establishment of a fixed rate base."



turn, rates could be promptly increased or decreased according to the facts as shown by the company's accounts.

Second, there would be maximum financial stability—because the actual cost of money as new securities are issued would be systematically provided for as a fixed and definite right of the company; there would be no speculative factors either during rising or falling prices to affect the security values or the credit of the company.

Third, the investors would know exactly what to expect as they contribute capital to the business, and they would be safeguarded in the return to which they are entitled.

Fourth, with these assurances as to return and with the effective administrative standards and machinery, there would be available constantly all the capital that would be needed for expansion to meet industrial and public needs. If the cost of money increases, the higher rate would have to be paid on the capital thus actually invested. At every point of new capital expenditures, the returns required would become a fixed burden on the ratepayers, on the basis of actual cost to the company, under commission supervision and approval.

WHAT is there in this plan that would be or could be unfair to investors or consumers?

I admit, of course, that if it proved to be actually unfair as a matter of broad policy, it would be invalid notwithstanding any legislative declaration of public needs. But the question is, how could it possibly be unfair, if considered with the problem of regulation as a whole?

It could be declared unconstitutional only if it were clearly proven to be unjust and confiscatory.

Mr. Wherry does not point out definitely how, in any respect, the proposal would be unfair and discriminatory. He conceives unnamed possibilities—which, if they materialized, would render the plan unconstitutional.

What are these possibilities?

In formulating the plan I was par-

ticularly careful to meet the requirements of fairness and to provide actually for reasonable dealing all around. I challenge anybody to take up any basic factor and show wherein the proposed fixed rate base would be unfair. I challenge him also to defend the present "fair value" with reference to the *criteria* set out above,—or to say that the *criteria* are not applicable!

MR. WHERRY falls back upon the general conception of value that is involved in rate regulation. He assumes, as many lawyers do (and as pointed out in my previous article), that there is an inherent value in a utility property, and that somehow this constitutes a self-determining *quantum* which automatically rises and falls with changing conditions—and that any legislative effort to ignore this fluctuation when it has taken place is *per se* unconstitutional. This rise and fall or flux in value is conceived as somehow connected with the change in the purchasing power of money. Without stating any definite relationship, Mr. Wherry assumes that as the value of the dollar declines, the equivalent money value of a utility property increases; conversely, as the dollar value rises, the corresponding money value of the utility property declines; and that such actual shifts of value cannot be disregarded in any policy of rate control established by legislation. He speaks with assurance as to the right of the companies when the property values are said to have increased, but is less certain as to the rights of the consumers when the values are assumed to have fallen. But does not this doubt on the one side shake the certainty on the other?

Mr. Wherry's constitutional contention would doubtless be right, if his economic views were correct. My challenge, therefore, does not involve the law, but the economic facts, —where I feel much more at home.

As an economic proposition, I believe that Mr. Wherry is wrong in his assumption that there is any self-determining connection between the value of a utility property and the change in dollar value. I went into this matter at some length in my previous articles, and shall not repeat the details of my analysis.

I shall merely say that the ultimate value of any business property depends upon its earning power, and this has no direct casual dependence upon the purchasing power of money. A competitive property which is not subject to regulation is free to fix the charges for its product as it pleases, and the value of the property is dependent upon the resulting earning power.

SO does the final value of a utility property depend upon the rates that are fixed, but they must first be based upon a prior "fair value" or rate base whose fairness must be determined without regard to earning power. The criterion of such a fairness must be independent of ordinarily inherent value factors. If, therefore, a fixed rate base as proposed were established by statute, and if the plan were recognized to embody a fair objective standard, and, therefore, constitutional, then there would not be any subsequent increase in value, nor decline, whatever the changes in

purchasing power of money or the shifts in price level. This is the economic fact which Mr. Wherry's article has ignored, but which is fundamental to proper consideration of the constitutional consequences that would follow the establishment of a fixed rate base.

Mr. Wherry states that if conditions change, rates must change, and that my proposal ignores the facts.

What are the facts which I ignore?

I certainly realize that there is a constant shift in price levels, but I also recognize that this shift, when carried into utility valuations under the "fair value" rule, makes the administration of rate making an impossible task, produces financial instability, fails to assure the investors the returns that were reasonably expected, and will not make available the new capital as needed for public purposes. And the fact is that the proposed rate base, with the proposed return, would meet reasonably every one of these requirements for financially sound and effective regulation. Is it not Mr. Wherry who ignores these fundamental facts of financial and economic relationships that are involved in the system of regulation?

MR. WHERRY returns to the condemnation analogy. I repeat that the only possible analogy appears at the point of time when ordinary condemnation takes place and when private capital is put into utility developments. Whenever a private property is taken for public purposes, it is valued then and there, and the basis of compensation is fixed once and for all for the previous owner; there is never any subsequent revaluation and change in the basis of compensation.

What the fixed rate base proposes is that the same policy of fixed compensation be applied to utility investments. So far as existing properties are concerned, no such definite standards prevailed when the capital was dedicated to public use; hence the proposal is to fix a sum now on the basis of present-day conditions—but to fix the amount once and for all, just as in the case of condemnation. For future properties, the amount would be fixed definitely when the private capital is turned over to public use; that is, the actual cash value at the time the capital is made public. This would remain permanently the fixed basis of compensation, as in the case of condemnation.

No one, certainly, would propose to make modifications in the valuation after the public-taking in condemnation has occurred. The value as de-

¶ "A COMPETITIVE *property which is not subject to regulation is free to fix the charges for its product as it pleases, and the value of the property is dependent upon the resulting earning power. So does the final value of a utility property depend upon the rates that are fixed, but they must first be based upon a prior 'fair value' or rate base whose fairness must be determined without regard to earning power.*"

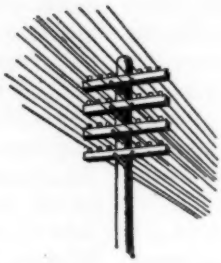
termined would remain notwithstanding any subsequent changes in price level. In the case of the utilities, the physical property is never taken, but the dedication to public purposes occurs at the time capital is contributed. This is the real time of the taking, and it is then that a definite basis of compensation should be established.

IF such a fixed rate base were established, investors would know the terms under which their capital is devoted to public purposes; regulation would rest upon definite standards; and adequate capital would be assured at all times for all public needs.

Where, then, is there unfairness to any group?

Where is there any change in value that must be recognized as a constitutional matter?

And where is there anything in the law of condemnation that stands in the way of the establishment of a fixed rate base?



The Over-regulated Business Worm Turns

A citizen's reply to his creditors

"I WISH to inform you that the present shattered condition of my bank account makes it impossible for me to send you a check in response to your request.

"My present financial condition is due to the effects of Federal laws, Provincial laws, County laws, Corporation laws, By-laws, Brother-in-laws, Mother-in-laws, and Outlaws that have been foisted upon an unsuspecting public. Through these various laws, I have been held down, held up, walked on, sat on, flattened, and squeezed until I do not know where I am, what I am, or why I am.

"These laws compel me to pay a merchant's tax, capital stock tax, excess tax, income tax, real estate tax, gas tax, property tax, water tax, light tax, cigar tax, street tax, school tax, syntax, and carpet tax.

"The government has so governed my business that I do not know who owns it. I am suspected, expected, inspected, dispected, examined, reëxamined, informed, required, commanded, and compelled until all I know is that I am supposd to provide an inexhaustible supply of money for every known need, desire, or hope of the human race, and because I refuse to donate to all and go out and beg, borrow, and steal money to give away, I am cussed and discussed, boycotted, talked to, talked about, lied to, lied about, held up, held down, and robbed, until I am nearly ruined, so the only reason I am clinging to life is to see what on earth is coming next."

—*By courtesy of the* FIFTH DISTRICT BANKER.

As Seen from the Side-lines

It never rains but it pours. Conservatively minded gentlemen interested in the subject of public regulation and its political reflexes have by this time arrived at some analysis of that political cataclysm which is called an off-year election.

* *

It was an off-year; off the reservation.

* *

From the Platte in the Nebraskas to the Merrimac in New England the people chose to abide their faith very largely in those candidates who happened to have been apostles of rigid, firm, and inflexible regulation of public utilities, amounting in some cases to the philosophy of public ownership.

* *

Senator George W. Norris (not the grocer), was subjected to a terrific duel in the primary contest calculated to enlarge such weaknesses in the public sentiment as he possibly possessed, with the assumption that he would be mowed down in the election by the once powerful Gilbert Hitchcock.

* *

His enemies said he was more interested in running the world than in helping Nebraska. They said he forgot local industry and agriculture while devoting the intensity of his talents to Muscle Shoals. They predicted he would drag out the bogey of "the power trust" and through it attempt to prevail upon the humble folks of the buttes and cornfields that it would prostrate him and, with him out of the way, fasten its hands upon the throat of the dear public.

* *

Well, Mr. Norris did just that thing and, lo and behold, he survives all the notable opposition and he will come back to Washington to continue as ever while Mr. Hitchcock will resume the work of publishing his newspaper back home.

* *

Mr. Gifford Pinchot was held up as an unforgiving and unretrievable dry in a state that, in some spots, is as wet as a sponge at the bottom of the sea. He was pictured as an astigmatic radical who refuses to recognize or admit the plenty of good that exists in the world. He was deserted by wet machines within his own party and subjected to the vociferous attacks of a diligent and hopeful minority.

* *

The cities, where the radical political element is supposed to be abundant, did desert Mr. Pinchot but the conservative folks of the rural sectors, presumably the exponents of individualism and least interested in imposing any restraints upon business, came out as a man on election day and by their support put Mr. Pinchot back into Harrisburg where he can secure much more regulation than he could by issuing manifestoes from Washington as a private citizen.

* *

Mr. Edward P. Costigan, Senator-elect from Colorado, was, in the Woodrow Wilson days, an apostle of the political psychology that "invisible government" was as harmful to the government as impure food to the body. He recalls the era of lobby investigation and the Clayton Antitrust Law and from his convictions of that time he has never departed. In fact, they have grown with him as the days and years flitted past. He spoke his theories to the electorate. More regulation, less consolidated power, was one of his platform specialties and he won a handsome victory over a gentleman who was accused of being much too intimate with so-called "predatory wealth."

NEW Hampshire has never elected a governor more than one time. The Yankee spirit, there at least, rebels against the possibility of autocracy creating and after a gentleman has had two years in Concord, the good folks have insisted that he retire to private life, taking his honors with him, lest he entrench himself so deeply he might not be uprooted. Yet Mr. Winant comes back for another piece of pie and he urges them to believe that his presence is necessary to combat the increasing power and plentitude of utility corporations. He gets his piece of pie, not because it has been a practice to serve pie for breakfast in New England, but because the folks accepted his exposition of the theories and dangers.

* *

IN adjoining Massachusetts—the Bay state will not like the word "adjoining" —a young gentleman from western Massachusetts campaigned for governor on the principle that more regulation of utilities is necessary and more convenience for the people in establishing municipally owned lighting plants is also quite necessary. His name is Ely, by the way. And he secured election for himself, the first Democrat in sixteen years, in fact since David I. Walsh, now Senator, was the principal occupant of Beacon Hill.

* *

GOVERNOR Roosevelt of New York—certainly everybody in the country knows his views on the public retention of the water-power sites and his succession to Alfred E. Smith in the campaigns to that end—won by the totalsome majority of 725,000.

* *

MR. Thomas J. Walsh, who provoked the Federal Trade Investigation of the so-called power trust, was a candidate for reëlection in Montana. He is no longer a candidate; he was elected.

* *

AND Mr. James Couzens of Michigan, who is struggling along manfully with his proposal to enlarge, expand, and enliven national regulation of the public utilities, walked through to as fine a victory as any man has achieved in many a day.

* *

UNREST caused it all, you say. If so, how did Mr. Winant, Republican, and the incumbent Mr. Walsh survive in Montana? How did the dry Pinchot carry Pennsylvania and the dry Winant and Walsh float through to victories in their respective states, if it were caused by prohibition, as you may suggest?

* *

CERTAINLY the economic distress did cause a civil revolution that will increase Mr. Hoover's anxiety and cause the Republican Old Guard moguls to devise some new slogans for the next campaign.

* *

BUT it is obviously, importantly, and impressively the fact that those gentlemen who whaled away at the existing order of things and coupled the Washington administration with utilities and organizations of wealth were the ones who accumulated the public favor.

* *

THERE was a belief current in this country that the ineptitude of Washington permitted stock gambling to proceed to elephantine proportions on the promise that real prosperity was here forever and could not be interrupted, much less debacled and that, when the collapse came, official Washington and official Wall street were unable to stem the devastation and restore confidence.

* *

IT was that psychology that caused the election of the gentlemen abovenamed to a very large degree. And it is that psychology which the utilities, in concert with other corporations, must allay before they can overcome the losses they have sustained in the legislative chambers and executive mansions.

John T. Lambert

What Others Think

The 57 Varieties of Bus Regulation

RAYMOND S. Tompkins, assistant to the president of the United Railways and Electric Company of Baltimore, writes entertainingly in *The American Mercury* of some of the problems of bus transportation. Under the title of "Ordeal by Bus" he pictures some primary discomforts of the long-distance bus traveler. The bus men, he says, find the "rider comfort" problem dogging them every step they take. He says:

"Statistics show that 20 to 25 per cent of the comfort-stops are always running out of paper towels. In another 20 per cent the traveler has to drop a cent or a nickel in a slot to get a towel and a cake of soap. If it is afternoon and the place has liquid soap containers they will be empty nine times out of ten.

In only about 50 per cent of these hotels can a disheveled bus rider get a drink of water without patronizing the dining-room. Where the comfort-stop is a lunch-room or restaurant the percentage of times he can get a drink without patronizing the lunch-counter seems to be virtually negligible. If he wants one he will have to buy food or else summon up nerve enough to ask for one without. This sometimes takes a good deal of gall, especially if the lunch-room proprietor is a Greek, and one happens to be the eighth or tenth in line. At gasoline stops it is not uncommon to see a thirsty bus rider clamber out, look wildly around for a drinking fountain, and then grab the filling-station hose provided for squirting water into the radiators, clamp his jaws on the nozzle and turn on the spigot; and he would be just as happy if it turned out to be a piece of gas tubing instead of a hose.

"CRITICS of the bus-riding business do not understand why these hotel and lunch-room proprietors do not do better by the loads of potential customers dumped into their laps by prearrangement with the bus companies. Even if all the passengers don't spend money, some of them will, and the comfort-stop place will get the trade to the exclusion of the other lunch-rooms and hotels. The forward-looking promoters of better public service gently adjure the comfort-stop landlords to brush up on their public relations, fling wide their doors, turn on the free water, and wash out the brush and comb at least one a week, thus selling more pie and sandwiches, attracting more customers to the bus line, and so creating bigger and better business."

AMONG the other problems of bus operation is that of taxation and regulation. Discussing these questions Mr. Tompkins says:

"Taxation and public regulation occupy the bus men's thoughts in odd moments. Nobody seems to know how to tax the bus lines or how to regulate them. The operators are particularly galled by the often repeated charge that their vehicles use the public highways free, and they spend considerable time working out figures to disprove it. Nor are they grateful to the National Tax Association for emphasizing the theory that because the steam railroads pay 6 per cent of their gross income for taxes and 10 per cent for maintenance of way, busses and trucks should pay 16 per cent of their gross in taxes in order to equalize matters. "Any state whose legislature saw fit to apply this theory," threatens Editor Carl W. Stocks of *Bus Transportation*, "would promptly lose its bus service *in toto* unless a compensatory raise in rates were coincidentally authorized by the public utilities commission." But railroad competitors of the bus lines are suspected of believing that an authorization to raise rates is the last thing the bus companies want, for then the chief reason the public has for preferring bus to railroad travel will disappear. Hence, when the bus men cry out against equalized taxation, they are said really to be crying out against equalized rates, for the whole foundation of present successful bus competition is the cheapness of the bus ride.

"REGULATION of busses is as chaotic as taxation. There are almost as many brands of regulation as there are states. In some states public service commissions have jurisdiction, in others, cities handle the job through municipal ordinances. In some places fares are regulated, in others, not; some commonwealths attempt to control types of service, others pay no attention to service. In Idaho, Oregon, and Nebraska

there is no limit to the number of bus companies that can operate; commissions cannot refuse anybody the right to run a bus line by arguing that there is plenty of bus service already. Time limits on operating certificates range from twenty years to three years in different states, but scarcely any state really issues a bus certificate or permit for more than one year at a time. Twelve states have one speed law for busses and another, more liberal, for private automobiles. In twenty-four states a bus chauffeur cannot be less than twenty-one years old. In other states anybody who can get a driver's license can drive a bus, which means that many bus drivers are seventeen or eighteen years old."

BUT in spite of all of the discomforts of bus travel, transportation by bus is on the increase. It evidently has some allurements. Whether the discomforts will overbalance the allurements in the long run, whether bus travel is a passing fancy, or is to become a permanent habit, time alone will tell.

ORDEAL BY BUS. By Raymond S. Tompkins. *The American Mercury*. November 1930.

The Revelation of Public Ownership Propaganda in the Investigation of the Utilities Propaganda

FOR two years the Federal Trade Commission was engaged in investigating the propaganda activities of the public utility industry against government ownership of utilities. The commission has not yet reported on that phase of its investigation. The commission refused to investigate propaganda activities in favor of government ownership, on the ground that it was not authorized to do so by the United States Senate.

Yet there is a need for an investigation of this phase of propaganda, states George L. Myers, assistant to the president of the Portland Gas & Coke Company. He says:

"The important consideration is that the facts about these organized methods and extensive propaganda activities cannot effectively reach the people nor get a proper airing in the press of the nation unless the investigation of the Federal Trade Commission is extended to admit the documentary evidence offered and to exact testimony from those prominently and actively identified with these organizations. A merely limited dissemination of printed copies of these documents by those of the industry will not get that measure of publicity which the importance of the revaluations justifies in the public interest and in fairness to the public utilities which have been subjected to investigation.

"The consideration given in the presentation of evidence in rebuttal and the apparent lack of news value in the testimony and exhibits presented of the practices of organizations seeking to promote public ownership were in marked contrast with the zealous attempts to elicit information that might reflect unfavorably upon the industry and the generous space allotted to conspicuous news reports seeking to be sensational in an endeavor to discredit the industry. It is difficult to understand why one side of the controversy should seem to have so much news value and the other side so little. Is there any reasonable justification for the activities of the proponents of public ownership being made immune from the penetrating rays of public investigation? Is there any good reason why the revelations of such an investigation should not be given the fullest newspaper publicity? Do not the newspapers have an impartial news obligation to the reading public? Can it be that the sensational proclivities of those proponents and their appeal to the emotions of the individual serve to rob our statesmanship of courage and a proper sense of impartial endeavor to serve the ends of justice?

"Still the Federal Trade Commission elects not to pursue the propaganda phase of the investigation to the conclusion of an impartial and complete inquiry. Congress does not act. Apparently the precincts of radicalism, their forces, resources, methods, and practices are not to be invaded by the hosts of inquiry. They must be treated with impunity. Nothing must be done to detract from the allegations that the public utilities are the arch propagandist of the age.

"LET us presume that those who advocate public ownership had been the subject of investigation and that they had submitted documentary evidence of organized activities on the part of public utilities. Would the Federal Trade Commission have been powerless to proceed further in the investigation and would it have been reluc-

Forbes Magazine

PUBLIC: *"Keep off. This engineer suits me!"*

tant to continue it? Would Congress have sat calmly and speechlessly? Would the partisan press have refused to bespatter its front pages with ink—both black and red—in a highly spirited demand that the conspirators be brought forthwith into the chambers of inquisition? Would the press have been as passively interested and unconcerned with these demands as it was with the request of the utilities? Would the demagogue have been lulled into a tranquil state from which he could not have been aroused? Would the self-seeking politician have scorned such an opportunity for political advantage? Heaven forbid that such a tyranny, such a despotism, and such a recreancy of public duty would have been allowed to come to pass, It is only for us to conjecture what might have been done, but the attempt in the recent investigation to misrepresent and distort the evidence of the utilities is quite enough to lend credence to the presumption that the investigation would have proceeded post haste and that the commission would have needed no mandate from Congress, but would have unhesitatingly exercised the inquisitorial powers vested in it either upon its own initiative or upon the indignant demands of the Norrises, the Brookharts, the La Follettes, the Fraziers, the Thompsons, and the Thomases.

"THE exhibits are sufficient evidence to justify a complete and impartial investigation of the publicity practices and policies, the relations with educational institutions and the legislative activities or organizations and conspicuous individuals who are exploiting public ownership. The time has come not to petition or ask Congress to act, but to demand it as a square deal. There are two sides to this question of public ownership. There are citizens who

advocate it and citizens who oppose it. It is unfair to inquire into the motives and practices of one side and not the other. A policy of discrimination among citizens is utterly indefensible. A courageous and fair statesmanship will not subject one side to a searching inquiry and exempt the other. No questions of controversy can be justly or definitely determined by a suppression of facts. Anything done by those in authority to suppress the facts by act or implication is tyranny."

THE Federal Trade Commission was not authorized to investigate propaganda in favor of government ownership. Perhaps that was a mere oversight on the part of the Senate, but the Senate, not the commission, would be to blame for that. Too often are courts and commissions blamed unfairly for what is in fact a lack of delegated authority.

THE RADICAL CAMPAIGN AGAINST THE PUBLIC UTILITY INDUSTRY. By George L. Myers. Address before the Public Relations Section of the Pacific Coast Gas Association; September 11, 1930.

The Trend Toward a 5-cent Kilowatt Hour

"WHAT this country needs is a good 5-cent kilowatt hour," was the recent paraphrase by an obscure janitor of a Washington, D. C., apartment house of a famous remark. It succinctly voices the objective of the electric industry for residential service in an average American city.

Is New York city going to attain this objective?

Officials of the New York Edison System claim that it will if its proposed rates are approved.

Critics of the utility claim that it will not, pointing to service charges and demand charges as "strings on a nickel rate that is merely dangled before the eyes of indiscriminating consumers."

If it were ever possible to reduce all the complications, movements, and countermovements affecting the control of electric rates to one small simple picture, that task was fulfilled in the statement of President Matthew S. Sloan of the New York Edison System to the Public Service Commission of New York, October 9, 1930. True, it was a picture frankly drawn from the utility angle and purported to affect the situation in New York, but the terseness, simplicity, and scope of Mr. Sloan's utterances challenged the interest of everyone really interested in such problems, regardless of affiliation or locality.

The primary purpose of Mr. Sloan's testimony was to explain his company's proposal for a $6,000,000 reduction in revenues conditioned upon changes in rate forms. More specifically, these changes involve a new "all time low" rate for New York residential consumers of 5 cents per kilowatt hour provided that fixed charges per customer can be defrayed through a separate service charge of 60 cents per month.

Among the important facts developed by Mr. Sloan were these:

That the fixed cost of serving the average residential customer wholly aside from the cost of current supplied is $13.04 a year or $1.09 a month.

That slightly less than 10 per cent of all gross revenues were paid out in various forms of public utility taxes.

That if the company's current had been donated to it and if it did not need any return during the year ending June 30, 1930, it would still have cost $37.40 per meter to take care of bare out-of-pocket expenses.

That 25 per cent of the total bills rendered by the New York Edison were for less than $1 and about 9 per cent were for less than 50 cents.

That almost a half million customers under the existing rates were not paying the bare cost of serving them.

MR. SLOAN adduced further facts to indicate that the well-known practice of substituting the minimum charge for the service charge in order to disguise or conceal charges for fixed costs so as not to disrupt public relations was not feasible in this instance since the minimum bill would have to be as

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A HEARST VIEW OF PRIVATE *vs.* MUNICIPAL CONTROL

Published in the nation-wide chain of Hearst newspapers on the eve of the elections of November 4th, this cartoon was designed to aid those candidates who advocated government ownership of the electric utilities. The source of the figures indicating the relative costs of electricity in the American and Canadian homes was not given.

high as $1.94 per month to cover fixed charges with any degree of economy or equity and yet retain the 5-cent kilowatt hour feature. Cutting the minimum rate to $1 would necessitate an increase in the commodity rate to 5¾ cents an hour.

Commenting upon the justification for the proposed revisions, Mr. Sloan condemned the discrimination between the various classes of consumers in the existing rates. He stated:

"Is it fair to stop the burdening of one home with part of the bare costs of carrying another home as a customer on our books and keeping electric service available to that other home? I do not believe that our rate making can take into account so-called rich or poor, as such, or be based upon supposed ability to pay. But it would be a mistake to assume that the great body of the casual, intermittent, or convenience users of electricity are to be found preponderantly among the wage earners or those in the most moderate financial circumstances. The thousands of private houses and large apartments only infrequently occupied, which abound in some parts of our territory, suggest a contrary inference."

Of special interest at this time was Mr. Sloan's remarks regarding the future business outlook of the electric industry in his territory. He said:

"If you could tell me what will be the business conditions affecting the use of our energy during the next year or two, I could form some better idea. I am not preaching any pessimistic word about general business conditions and prospects but I do know the tendencies which are now at work as to our sales of energy. We have about caught up with the large amount of building construction undertaken a year or two ago. We are still getting the increases which come from that but it is about over and I do not see any program of new building projects coming along to keep up the trend. Certain it is that industrial conditions are tending now to decrease very substantially the use of energy for power and commercial uses, and to some extent even for residential uses. Unless we put into effect this change in the form and amount of rates, we may have to face actual decrease in our sales of energy with substantial falling off in revenue. We may experience this added loss even with the new rates.

"The prospect for maintaining an increase in our sales is none too good. Decrease in sales and revenue seems to be indicated. If, at the present time, I had to

submit to the boards of directors of these companies a proposal involving a reduction of six million dollars, I doubt if I could get it approved, no matter how attractive its other features.

"I am not a pessimist about the business future of this country and this city, and I feel reasonably sure that sooner or later there will be healthy and beneficial increases under the new rates, but I do not now expect that we will get the six million dollars back in a few months or even in a few years. We will do our best to do so as soon as we can in better serving our customers with more electricity at lowered cost. In the face of conditions which threaten the falling off in our sales of energy we are prepared to carry out promptly our offer to reduce our revenues and our rates as soon as our proposals for a unified, simplified, and promotional form of rates have been approved. We will change and reduce them further if and when a fair trial of these rates warrant a reduction or change of rates from the results of their operations under the conditions then existing."

In conclusion, Mr. Sloan reiterated his oft-repeated views against the practice of unregulated submetering.

RATE REDUCTION PROPOSALS. Summary of a statement by Matthew S. Sloan, president of the The New York Edison Co. and Associated Electric Companies, before Public Service Commission, October 9, 1930.

The Bone of Contention in the Battle Over Railroad Valuation—The Recapture Clause

AFTER many years spent in valuing the railroads of the country at an enormous expense, it is interesting to note from the pen of Thomas F. Woodlock, a former member of the Interstate Commerce Commission, that there would be little real interest in the valuation question so far as the railroads are concerned if valuation were required for the mere purpose of rate making. Says Mr. Woodlock:

"The main importance of the valuation battle arises from the recapture provisions of the act. Were it merely a question of ascertaining value for the purpose of rate making, there would be little real interest in the matter, for everyone by this time—everyone, that is, who has had intimate contact with the controversy—knows that in actual practice rates never have been and probably never will be made with direct mathematical reference to valuation.

"Railroad values when, as, and if finally fixed will serve for little more than a general standard of reference for occasional use. But the Transportation Act has created for many carriers very important money obligations to the United States, and the measure of these obligations depends upon the 'values' found, so that it is absolutely necessary for the interested carriers to establish their full rights under the law of the land. Therefore, while the recapture clauses stand in the act, there is nothing ahead but a long series of bitter legal battles.

"In the middle nineties—after there had been a prolonged decline in prices—the 'liberals' of the day fought hard for 'reproduction cost' as the measure of 'value,' while the carriers demanded their 'investment.' Today—after there has been a large advance in prices—the 'liberals' demand 'investment' ('prudent' at that!) while the carriers insist that 'reproduction cost' is their due. Mr. William J. Bryan's argument in Smyth *v.* Ames (1895) would stand as the carriers' argument today, while Mr. Justice Brandeis' dissent in the Southwestern Bell Telephone Case (1922) would accurately represent the carriers' position in 1895.

"Further, unless all signs fail, it will not be many years before we shall find both parties returning to their original positions of 1895 after prices shall have gone down again to their prewar level. Indeed, we need not, perhaps, have to wait more than a little while for this shift of position. In the electric-power industry fully 60 per cent of the investment has been made since the great rise in prices following the war, and it is probable that at this moment 'reproduction cost' of plant in the power industry is less than 'book investment.' It will be interesting to observe the respective positions that the 'liberals' and the power companies take as to 'value' of these plants, in view of this fact! (Perhaps the dissent of Mr. Justice Brandeis in the O'Fallon Case may furnish his disciples with a 'principle of distinction' so that they can, with some show of support, argue for 'reproduction cost' in the case of a power company and 'investment' for a railroad. The mere fact that the said principle rests upon the fallacy of the 'vicious circle' need not necessarily stand in the way.)"

SINCE the decision of the Supreme Court in the O'Fallon Case, Mr. Woodlock says the debate between the "liberals" and the carriers has shifted somewhat.

"Thus, since that decision the debate between the 'liberals' and the carriers has shifted ground somewhat. The former now complain that the Supreme Court has given no real light on the problem, that estimates of 'reproduction costs' are necessarily pure speculation, that such rule as the court has laid down is 'unworkable,' and that the results of its application will surely work injustice to either public or carriers.

"The latter insist that the rule is clear enough, that reproduction-cost estimates are sufficiently reliable for all purposes, that there is no great difficulty in making the rule 'work' other than an unwillingness to work it, and that any method of valuation will favor one or the other party whenever a large change in prices occurs."

BACK in the pioneer days, when the prevailing complaint against the railroads and the utilities was that they were earning dividends on watered stock, valuation was looked upon as a panacea for low rates. Valuation was made the corner stone of most of the new utility regulatory laws. Congress felt the impulse of this movement and ordered the valuation of railroads which has been going on for many years at a tremendous cost. The fact of the matter is that valuation was not a panacea. So far as the utilities were concerned it did not show that they were charging exorbitant rates. Valuation is not now looked upon as quite as important in rate making as it once was. It is occasionally used as a weapon of offense or defense in extreme cases where the regulation of utility rates is involved. As Mr. Woodlock says, the controversy upon valuation is one of the most striking examples of "wishful thinking" that can be found in economic history.

IMPRESSIONS OF AN EX-COMMERCE COMMISSIONER. By Thomas F. Woodlock. *Barron's.* October 6, 1930.

When Public Utility Employees Complain of the Ratepayers

THAT utilities operated by the government are not free from criticisms leveled by ratepayers against privately owned utilities is shown by a criticism of telephone service which comes from Australia according to *The United States Daily* which states:

"Courtesy to telephone girls is enforced by the operators themselves in Australia, according to information from the trade commissioner at Sydney, James E. Peebles, made public on October 16th by the Department of Commerce.

"Impolite users of the telephones often find their calls cut off or their service suspended, not through company action but through the operators' method of enforcing good manners, it was stated.

"Recent suggestions for improvement of Australian telephone service include a speeding up of long-distance calls. In Australia the telephone system is operated by the government, and the Postmaster General's Department, in its report for the fiscal year ending last June, announced the number of cancellations of telephone service during the year as 37,500.

"The Department of Commerce statement of the information from Mr. Peebles follows in full text:

"Suggestions for the development and improvement of Australian telephone services are receiving the consideration of Australian business leaders at the present time. In an article appearing in a prominent Australian business journal an Australian writer expresses the opinion that the country's telephone system could profit greatly by the adoption of more modern business methods as applied by well-trained executives, salesmen, and advertising experts. Improvements in service would result in a much larger number of telephone calls and revenues could be put in a flourishing condition, the writer believes.

"Suggestions for the improvement of long-distance service have been offered by several of the interested Australians. It is pointed out that the average time for a long-distance connection in Australia is eight minutes, whereas in the United States, which the writer uses as a comparison, it is reported that in 1929 more than 70 per cent of the long-distance calls were completed while subscribers held the telephone.

"One of the rather unusual aspects of telephone service in Australia has been reported by subscribers who state that if they are not courteous to the "hello girl" their calls are likely to be cut off or their service is suspended. Apparently such punishment for irate telephoners is not always meted out, nor is it an official rule, but through the insistence of telephone employees on politeness it has become a common practice, the subscribers state."

IT is interesting to notice (if this report is accurate), that it is the telephone employees rather than their employers who insist upon politeness. In this country a question as to the suspension of service for impoliteness would hardly be left to the discretion of employees. It makes one wonder how well organized labor can handle public relations in running business.

CANCELLATIONS OF PHONE SERVICE IN AUSTRALIA RUN HIGH IN YEAR. *The United States Daily*, Washington, D. C. October 17, 1930.

Publications Received

HARVESTS AND HIGHLINES. Chicago: Middle West Utilities Company; 119 pages. 1930.

MINNESOTA YEAR BOOK. Minneapolis, Minn., League of Minnesota Municipalties. 231 pages. 1930. Price: $5.00.

TELEPHONE THEORY AND PRACTICE. By Kempster B. Miller. New York: McGraw-Hill Book Co., Inc. 486 pages. 1930. Price $5.00.

THE SOCIAL AND ECONOMIC VIEWS OF MR. JUSTICE BRANDEIS. By Alfred Lief. New York; The Vanguard Press. 419 pages. Price $4.50.

WRECKING REGULATION ALSO. By Judson King. Washington, D. C., National Popular Government League; 15 pages. October 20, 1930.

Other Articles Worth Reading

CRISP COUNTY BUCKS THE UTILITIES. *The New Republic;* pages 290–292. October 29, 1930.

NATIONAL ASSOCIATION ADOPTS SELF-IMPOSED REGULATORY MEASURES. *Bus Transportation;* October, 1930.

ORDEAL BY BUS. By Raymond S. Tompkins. *American Mercury;* November, 1930.

TEN QUESTIONS AND ANSWERS ON MERCHANDISING POLICIES. By Marshall E. Sampsell. *N. E. L. A. Bulletin;* pages 599–603. October, 1930.

THE DRIFT TOWARD CONFISCATION. By Fred W. Sargent. *American Bankers Association Journal;* pages 278–280 and 375. October, 1930.

According to Reports—

SO difficult is it to become a subscriber to the government-owned telephone company in Japan that the privilege of having a telephone is accorded holders of "lucky numbers" in government lotteries upon payment of approximately $420. The only other method of obtaining a telephone requires the services of a licensed broker and an even larger payment. The Japanese government is so far behind in providing facilities to meet the demand for telephone service that the custom of one subscriber renting a telephone from another or purchasing it outright through brokers, is being extensively followed.

THE number of telephones in use in the United States has increased four times as fast as the population during the past decade. The new census figures give our population as 122,698,000,—which is 16.1 per cent more than in 1920, yet there are now more than 20,000,000 telephones in use, as compared with 12,000,000 in 1920—representing an increase of 59.2 per cent in ten years.

WHAT READERS ASK

Out of the mail bag of the editors have come these questions; because they touch upon subjects of broad interest to those in the public utilities field, they have been selected for publication—together with the answers. What questions do *you* want to ask?

QUESTION

Has the legal profession ever been considered a public calling?

ANSWER

Not that we have ever heard of. At one time surgeons were considered to be engaged in a public service, but the ancient books make no mention of any inclination to put lawyers in the same category. It would be very difficult to regulate the rates of either lawyers or surgeons on the basis of the regulation of public utility rates. Both surgeons and lawyers would be in a bad way if their compensation were limited to a fair return on the value of their office equipment. The service of both of these professions is personal and is usually measured on the basis of what the traffic will bear.

QUESTION

How long have we had state commissions for the regulation of railroads and public utilities?

ANSWER

The present so-called public service or utility commissions were, for the most part, the outgrowth of the old railroad commissions. The first of the railroad commissions appeared in New England. New Hampshire and Rhode Island each established a commission in 1844; Connecticut in 1853, and Vermont in 1855. New York established a commission during the same year. Maine followed in 1858, Ohio in 1867, and Massachusetts in 1869. In 1905, new commission laws were passed in Washington, Wisconsin, and Indiana, establishing commissions with extended powers. In 1885 Massachusetts established a board of gas and electric light commissioners. In 1905, a commission of gas and electricity was also established in New York.

The modern period of regulation, however, is usually said to have begun in 1907 when Wisconsin extended the jurisdiction of its commission to telephone, telegraph, light, water, and power companies and New York established two public service commissions giving them jurisdiction over railroads, street railways, common carriers, gas and electric companies. Since that time modern public utility commissions have been established in most of the states.

QUESTION

Mark Sullivan says that there is a row on about the Supreme Court and that this is likely to become a political issue. What is this issue?

ANSWER

The issue arises over a difference of opinion as to what shall constitute the rate base, or the basis of the earnings of public utilities. Ever since the decision of the Supreme Court in the case of Smyth *v.* Ames in 1898 there has been this difference of opinion. Originally when values, as compared with costs of building railroads, were low, the ratepayers desired the establishment of the value rule. Since that time values have risen; and for a considerable period the ratepayers have insisted that the utilities should be limited to earning a reasonable return on the investment in their property, rather than on its present value. The railroads, of course, have also shifted their position. They now argue that the return should be on present value in accordance with the rulings of the Supreme Court.

The issue was very sharply presented in the Southwestern Bell Telephone Case in which the court was asked to reverse itself.

This the court refused to do, but Mr. Justice Brandeis, with whom Mr. Justice Holmes concurred, took the position that the value rule is legally and economically unsound.

The only way the present law can be changed, short of an amendment to the Constitution, would be for the court to reverse itself. Hence, from the standpoint of those who feel that the present rule is inequitable, the importance of securing justices who will take the same view as the justices who dissented in the Southwestern Bell Telephone Case, rather than of those who favor upholding the rule which has prevailed so long, and under which the rapid development of utility service has taken place.

In the meantime, however, values may fall, and in that case, the opposition to the present rule from the standpoint of the ratepayers, might well be less intense.

There are some, however, who object to the present rule on the ground of impracticability; that is to say, on the ground of the difficulty of fixing value. Many also oppose the present rule on the theory that the rate base should be stable and certain, which it can never be so long as it is based upon value. They hold that the rate base should be fixed and adjustment made to take care of the changing value of the dollar by changing the percentage the utilities are allowed to earn on the rate base.

Any political appeal for a change in the rule, however, will probably be on the claim that limiting the utilities to earning a reasonable return upon their investment, rather than on the present value of their property would produce lower rates.

Question

What part of the money expended for the family budget goes for gas and electricity?

Answer

According to a letter of the Industrial Conference Board of April 30, 1930, various items of a household budget were apportioned as follows: food 43.1 per cent; housing 17.7 per cent; clothing 13.2 per cent; coal 3.7 per cent; gas and electricity 1.9 per cent; sundries 20.4 per cent. Owing to greater increases in other items, in March 1930 the per cent of the budget chargeable to gas and electricity dropped to 1.46 per cent. On the basis of an average weekly wage of $27.59 this would equal 40.3 cents per week or $1.74 per month. On the basis of 1.9 per cent, gas and electricity would amount to $2.20 per month. That is to say the combined service of the average would run between 6 and 7 cents per day.

Question

It is reported that a United States district attorney in Kansas City, Missouri, has said he would seek to indict a gas company as a "manufacturer of liquor" in connection with the confiscation of an 800-gallon still in the basement of a garage supplied with gas by the gas company, and that the indictment would be sought because the gas company's meter was in full view of the still and that he considered the company culpable in that no report had been made by its representative concerning the liquor manufacturing apparatus.

Upon what possible ground could the company be held liable?

Is a person guilty of a crime which he sees committed but of which he makes no report?

Answer

Of course, we do not know the theory upon which the district attorney is proceeding. Ordinarily a person would not be held guilty of a crime which he witnessed but which he made no report of.

In this case, however, it is probable that the district attorney will claim that by knowingly furnishing gas to persons who are violating the law the company becomes a *particeps criminis*. It has been held, for example, that one who carries wood as fuel for a still for the purpose of making whisky is guilty of aiding and abetting the manufacture thereof. (Barnes *v.* State, 18 Ala. App. 344, 92 So. 15.) If this is good law, it would apply by analogy to gas. Wood is furnished for heat and so is gas.

Not long ago a utility company in one state ordered its meter readers to report violations of the law coming within their notice and this raised a terrific storm of criticism. Whatever one may think about the propriety of such a proceeding, it certainly raises a nice legal question. The difference of opinion as to the propriety of the action is probably based largely upon a difference of opinion as to the desirability of the law itself, which is being violated. Probably no one would object to the company's representatives reporting such illegal acts, for example, counterfeiting operations, especially if the utility service were used in the manufacture of the spurious coins.

OUT OF THE MAIL BAG

The Attitude of Union Labor toward Utility Employee Pension Systems

I HAVE read with interest the article published in the September 18th issue of PUBLIC UTILITIES FORTNIGHTLY entitled "Who Will Pay the Utility Employee's Pension?" by Herbert Corey. This article has moved me to express my thoughts on the subject in my personal capacity and not as an official of the American Federation of Labor.

As a general policy all organizations affiliated with the Railway Employees' Department of the American Federation of Labor, and in fact, all *bona fide* railroad labor organizations, so far as I know, have declared their opposition to railroad company pension claims, on the following grounds:

(a): They are employer pension schemes.

(b): The employer reserves to himself all rights and privileges to administer, or change, or entirely cancel the pensions.

(c): The employee has no legal contract stating the terms and conditions under which he will secure a pension or the amount thereof, nor has he any voice in any of these related matters.

(d): In the national strike of 1922 of the Federated Crafts, railroads did cancel employees' pensions who refused to remain at work, or to return to work and scab. They did call back men whom they had pensioned and to whom they were paying pensions and discontinued their pensions if they refused to scab.

(e): After this strike was settled certain railroads decided to take and they are now taking employees out of service when they reach the "pension age," but refuse to pay the pension, stating their reason to be that the employee went on strike, stayed on strike, and did not return to work until after the organizations secured a settlement of the strike.

(f): Pensions are, in fact, unpaid wages and do have an influence on managers when the organizations are undertaking to negotiate rates of pay.

(g): Employers' administration and control of pensions offers a feasible and easy basis for coercion and intimidation of workers and have been and are being so used.

(h): Employers' pension plans are generally publicly justified by managements as representing the big-heartedness of the employer, thus pensions become expressions of paternalism and not payment of earned compensation, which they are, in fact.

(i): Employers' pensions are a social menace and a fraud. They keep many workers from buying and paying for the protection they know their family should have and will need, therefore, are a social menace. When they have been promised to the workers and they have gone on through life expecting to receive this pension and it is then denied them, they are a fraud.

(j): I believe railroad workers prefer an adequate wage, secured by collective bargaining through their organizations, fully compensating them for the value of the service they render. They may then provide, out of these earnings, for such insurance protection as they may desire.

(k): I believe our railroad workers are opposed to "company pensions" and in favor of Federal and/or state old age pensions or insurance laws, not only for railroad workers but for all citizens.

I think Mr. Corey has expressed in very plain and frank language many of the problems involved.

—B. M. JEWELL,
President, Railway Employees' Department, American Federation of Labor.

The Interference of the Federal Courts with Commission Regulation

YOUR article entitled "The Alleged Interference of Federal Courts with Regulation," in your issue of July 24th, seems to me to require an answer.

In my opinion (and I have had some experience in these matters), it proceeds on a wholly wrong premise and assumes that which, if true, would justify all of the criticism leveled at the courts and more.

First: It assumes, as a premise, that the courts review the facts, weigh the evidence, and reach their own conclusions as to value, rate of return, and other necessary findings required in rate cases; that they consider

the evidence of valuation for the purpose of determining what weight they think proper to give it, and do not confine themselves to a review of the evidence only of ascertaining whether the value found will result in confiscation. In other words, that they should substitute their judgment for that of the commission, presumably chosen for experience and training in rate matters.

If the courts are to finally pass upon evidence and the weight accorded to the testimony, then why the useless extravagance of a commission?

If the matter is to be referred to a master without any training in these matters and he and the judges take the testimony and weigh it and decide, this can as well be done in the first instance, and the very large expense attendant on the commission avoided.

While, as is said, comparatively few cases are taken to the Federal courts, yet those so taken are the important ones. It would seem that the Supreme Court in many cases has held, as Chief Justice Hughes stated in the Minnesota Rate Case:

> "We do not sit as a board of revision to substitute our judgment for that of the legislature or of the commission lawfully constituted by it, as to matters within the province of either."

Second: The article states that McCardle *v.* Indianapolis was the most important of the Federal court cases, the result of the Indianapolis Case being reproduction cost depreciated for the rate base. As to this, the Supreme Court says:

> "While some expressions of the district judge indicate that he was of the opinion that dominant or controlling weight should be given to cost of reproduction less depreciation. . . . It is clear that the nineteen millions fixed by him as the minimum value could not have been arrived at on that basis."

I cannot see how this case is authority for the claim that reproduction value now controls.

In the latest case, St. Louis & O'Fallon Railroad, the court definitely states: "Thirty years ago, Smyth *v.* Ames announced" the rule for finding fair value. And as to reproduction, simply says that there must be considered "The present as compared with the original cost of construction."

The Supreme Court of the United States has not declared reproduction cost less depreciation is the basis of fair value. It has consistently cited, at least, and presumed to follow, the Smyth-Ames Case. At the time of that case, reproduction was some fifty per cent of the actual cost. William Jennings Bryan urged that reproduction was the basis of valuation. This was opposed by the utility and the Supreme Court held with the utility that reproduction cost was not the basis. Since such time, costs have increased until reproduction largely exceeds original cost and the utilities, shifting their ground, now claim what William Jennings Bryan then claimed, that reproduction is the basis and some of the lower courts have followed this contention. As I read the Supreme Court decisions, that court never has. So where the lower courts give reproduction, when reproduction has gone below actual cost, the utilities will then be in position to reassert their contention in the Smyth-Ames Case. If the Federal courts jockey the rule up and down, fixing as the basis of value that which produces the most for the utility and penalizes the public in each instance, then they are entitled to all of the criticism to which they have been subjected, and more, but I cannot see that the Supreme Court of the United States has done this. The utilities have been insistent in claiming reproduction and that the United States Supreme Court has so held.

—Ganson Taggart,
City Attorney, Grand Rapids, Mich.

Editor's Note

We think our correspondent is mistaken in his belief that the article criticized proceeds on the premise he states.

The criticism bearing upon the reference to the McCardle Case is no doubt justified. We did not mean to convey the impression that the Supreme Court has adopted a rule that present value is to be measured by cost of reproduction. As we read the decisions of the Supreme Court it has never laid down such a rule, and we think it never will. Such a rule would be as inconsistent with the rule that utilities are entitled to earn a return on the present value of their property as would be a rule that the present value is to be measured by original cost. If either of these cost factors were the conclusive measure of value, we should not have a value rate base. We should have only a cost rate base.

There may be times when reproduction cost is a fairly reliable measure of present value; there may be times when original cost may be an accurate measure of present value; there may be occasions when neither would be an accurate measure of present value.

The Supreme Court rule, as we understand it, is that reproduction cost is only one of the factors to be taken into account in arriving at present value; but that reproduction cost must *really* be considered and given the weight to which it is fairly entitled. A mere recital by a commission that reproduction cost has been taken into consideration when it is apparent from the evidence that it has not been given any weight would not be enough to satisfy this rule.

The March of Events

Alabama

Trains Cut to Reduce Expenses

More local passenger trains have been discontinued entirely, or mixed trains substituted, in Alabama within the past five months than for any like period in Alabama's history, according to the records of the public service commission and authorities on the history of transportation in the state, says the Montgomery *Advertiser*. This newspaper then continues:

"Alabama, just now, it is pointed out, is beginning to observe the reaction and the results of a revolution in the transportation system which has been within the making for the past ten years or more.

"The reason for the discontinuance of the local and short haul passenger trains is very simple. Each petition discloses that the public is not patronizing the trains, and that for months these trains have been operating at a loss. Competition has been felt most keenly in the passenger traffic.

"Within the past five months the public service commission has received petitions requesting authority to discontinue or to replace with mixed train service, 28 passenger trains in Alabama."

Colorado

Commission Investigates Extension Rules and Regulations

The commission on October 27th began an investigation into the rates and regulations governing extensions of service by electric, gas, and water utilities. The investigation was started on the commission's own motion in order to gain information on which to revise its regulations concerning the public utilities over which it has jurisdiction and also municipal plants serving customers outside of municipal boundaries.

The intention is to promulgate uniform regulations among the utilities for extension of service and reasonable, uniform rates for such extensions.

Gold Rushes, Prohibition, and Panics Enter Rate Case

In the summer of 1859 when a party of placer miners found gold near the present site of Leadville, there was a wild rush to the new diggings and later, in 1877, when lead carbonates were identified, a second rush of prospectors arrived. The census of 1880 showed a population of 14,820 and when a water utility was constructed it was built to serve more than 12,000 people. The panic of 1907 struck Leadville a staggering blow and the census of 1910 showed the loss of about 41 per cent of the population, and by 1930 the census showed a population of 3,754 persons.

This situation has a direct bearing upon the rate proceedings of the Leadville Water Company which are now pending before the public service commission. Public representatives insist that the company is not entitled to rates based upon a plant built for a much larger population.

The city has also demanded a 50 per cent reduction of hydrant rentals. In this connection it was shown that taxes have been increased since prohibition deprived the city of $30,000 revenue from saloon licenses, and, according to the Leadville *Herald-Democrat*, city expenses must be reduced or bankruptcy will ensue.

There was evidence that the value of property in the city had depreciated approximately 50 per cent because of the decrease in mining activities and population.

It has been stated that the water company is requesting a yearly increase in revenue from domestic and commercial consumers of $7,558 while, according to witnesses, if the industrial users of the community were placed on a metered basis, this increase would not have to come from household or commercial users. George H. Rankin, hydraulic engineer for the commission, expressed the opinion that any increase in Leadville's water rates should be placed on other users of water rather than domestic users.

Comparisons of rates in other towns were presented to the commission. Counsel for the utility, however, contended that conditions were different in Leadville than in other places.

Illinois

Lower Gas Rates Demanded in Waukegan

A 10 per cent slash in gas rates in Waukegan has been demanded by Mayor L. G. Yager of that city. The rates are now based on a sliding scale and range from $1 to $1.30. Service is rendered by the North Shore Gas Company, which operates in other cities and villages on the north shore between the state line and Evanston. All of these communities, the newspapers announce, have joined with Waukegan in the fight for lower rates.

William E. Baehr, president of the company, contends that the present rates are as low as those in the average city or village, and that under present conditions the company cannot see its way clear to lower the cost of the service.

Indiana

Denial of Telephone Rate Increase before Court

LAST August the Indiana commission, in refusing to grant relief to the Southern Indiana Telephone & Telegraph Company, which alleged that its rates were insufficient, pointed out that economic conditions were such as to postpone a decision until next year. The company then applied to a Federal court for an injunction, which was denied because a final order had not been entered by the commission, and the case was continued until October 27th.

The commission then revoked its former order and entered a new order denying the rate increase. This brought the matter up before the court again, where it was argued that the total property of the company was worth $1,890,000 and that it was seeking a 3.42 per cent return with a 5 per cent allowance for depreciation. The return in 1928 on that figure, according to James W. Noel, attorney for the telephone company, was only 1¼ per cent.

The commission representatives asserted that the company had obtained fifteen rate increases since 1926 and that revenues in 1927 and 1928 were increased 48 per cent, says the Indianapolis *Star*.

L. C. Griffiths, president of the company, said that the drought-stricken condition of the territory had been taken into consideration before the rates were set, and asserted that the increase in rates probably would cause a loss of between 500 and 1,000 of the present 13,500 subscribers to the company.

Louisiana

Industrial Developments Sponsored by Utilities

EXPENDITURES of millions of dollars by the various public utilities serving New Orleans and surrounding territory will, according to the New Orleans *States*, bring about an immediate industrial development in that section. A. M. Lockett, president of the Association of Commerce, is given by the *States* as authority for this statement. He is quoted as follows:

"Virtually every railroad system serving our city is preparing to spend immediate millions to get ready for something which they see is coming. The Gulf, Mobile and Northern Railroad, which has an affiliation with the Burlington System, has announced that it expects to spend $3,000,000 in the freight terminal on the Industrial canal.

"The Louisiana and Arkansas officials say they expect to spend between $2,500,000 and $3,000,000 in building a warehouse and generally improving their terminals here. The Southern Pacific asked the commission council last week to approve plans for the construction of an $800,000 addition to the $250,000 produce terminal.

"The Southern Pacific Steamship Line has loaned the dock board more than $1,000,000 with which to pay for the construction of a beautiful terminus for New York steamers at the foot of Canal street.

"The Illinois Central is about ready to start construction of its new Union Station, which will represent an investment of $8,000,000. The Southern railroad recently started terminus at Chalmette, which represents an investment of more than $250,000.

"In conjunction with the railroads we now seem sure to get within very short order the Public Belt bridge across the Mississippi. The new Flint-Goodridge Hospital for negroes,

costing $250,000, will be under construction soon. It will be a unit of the Dillard Memorial to cost $2,000,000.

"The installation of a $15,000,000 enlargement of our sewerage and water and drainage is nearly completed."

Maryland

Taxicab Liability Ruling

THE public service commission, says the Baltimore *Sun*, has announced that it would appeal from the ruling of Judge George A. Solter, vacating the commission's order that the Sun Taxicab Company obtain either liability insurance or a $60,000 reserve fund to pay injury claims.

The commission, after an investigation, had found that the financial status and mode of operation of the company required some provision for meeting accident claims, and its order was entered. The cab company appealed to the circuit court protesting that the commission was discriminating in singling it out from other companies in the city for its action. Chairman Harold E. West, of the commission, said that the hearing on the company's franchise happened to be pending when the insurance matter arose.

Dial Phone Change Expensive to Trash Collector

THE installation of a dial phone, with the subsequent change of number, will cost the Foreman Company of Baltimore, collector of the city's refuse, a $1,050 paint job, according to information given the public service commission. The Baltimore *Sun*, in reporting this proceeding, says:

"If the phone company installs the new type instrument and changes the number to Chesapeake 2300, it will mean painting over 'Homewood' on each of the seventy refuse collection trucks, according to E. T. Foreman, president of the company.

"The contractor embodied his protest against the proposed action in a letter in which he quoted the cost of the repainting and asked the commission to prevent the change."

Massachusetts

Blue Sky Law for Holding Company Securities

THE Public Franchise League has submitted a memorandum to the department of public utilities urging the recommendation of legislation to subject holding company securities to the provisions of the Sale of Securities Act, commonly known as the "Blue Sky Law," by abolishing the exemption now enjoyed by such securities if listed on a Massachusetts stock exchange.

The memorandum, as reported in the Springfield *Union*, states that the Sale of Securities Act was enacted in 1921. It gave the department supervision over the promotion and sale of securities in the state. One section of the act, however, exempted many classes of securities from the provision, and among these exemptions were securities issued by holding corporations against public utility securities also held by such holding corporations and securities listed upon a Massachusetts stock exchange. The first of these exemptions was abolished this year upon the recommendation of the special commission on control and conduct of public utilities. The result, according to the memorandum, has been a great inflation of the securities which are now on the market. Securities of holding companies are now subject to the provisions of the blue sky law unless they are listed on a Massachusetts stock exchange.

If subjected to the provisions of the act, the companies issuing such securities would have to file certain information under oath with the department, open to public inspection. The stock exchange, according to the memorandum, lists securities simply on the strength of information furnished by the companies issuing the securities and no independent investigation is made of the truth of the information so furnished.

Meter Installation and Service Charges Attacked

THE state department of public utilities has under consideration a complaint against a $3 meter installation charge and a monthly service charge of the Suburban Gas & Electric Company of Revere. Representatives of the city have protested that the charges are unjust and unfair. Hearings on October 27th were continued to November 25th to give the parties additional opportunity to prepare for the presentation of the case.

An investigation of the rates charged for electricity by the Southern Berkshire Power & Electric Company has been asked by Representative W. Taylor Day of Great Barrington, who spoke at a hearing before the commission on October 23rd. It was said that the Great Barrington Chamber of Commerce had often tried to find out whether the rate was reasonable, as a result of which agitation half-cent reductions had been granted. Edward C. Mason, representing the company, told the commissioners that five reductions had been made since January 1, 1926, in the general household rate and another is planned for this year. Further information from the company was to be submitted.

Michigan

Phone Inquiry Ordered

A STATE-WIDE investigation of rates charged by the Michigan Bell Telephone Company has been instituted by the commission. An order was issued to the officials of the company calling upon them to appear before the commission on November 18th to show cause why their rates should not be lowered "in view of the general economic conditions." The order is based upon a complaint by Attorney General Wilber M. Brucker of the rates charged by the company on its "real valuation," and a demand made by the attorney general that an investigation be made by the Commission.

Mississippi

New Utility Firm in the Field

A NEW public utility, with the right to develop gas and oil holdings as well as manufacture and distribute electric power, according to the Jackson *Clarion Ledger,* has entered the Mississippi field with the chartering of the Mississippi Transmission Corporation. The *Clarion-Ledger,* in discussing this new development, adds:

"Neither nominal value or par value was assigned to the stock in the charter which provides for issuance of 25,000 shares of common 'for such consideration as may be fixed from time to time by the board of directors.' The board members are not listed in the articles of incorporation nor were they obtaining through other sources.

"Right to acquire and operate water-works plants and ice plants in the state is included in the provisions of the charter, as well as authority to drill for natural gas. Power to lease from private individuals, corporations, or governmental agencies, including the Federal Government, or to purchase, manufacture, and distribute electrical energy for heat, lighting, and power purposes is given the transmission firm under Mississippi laws. One section of the charter says it is the purpose of the new company to 'carry on the foregoing business in Mississippi, Louisiana, Arkansas, Tennessee, and Alabama.'

"The firm was given power to acquire 'in any manner' lines for the transmission of electricity, and to sell electricity or power wholesale or retail to consumers direct or to municipalities in bulk quantities at the town limits.

"Eminent domain is granted the transmission company."

Missouri

Union Electric Rate Hearings Involve Cost Basis

THE commission has begun an investigation of the rates of the Union Electric Light & Power Company of St. Louis, following an extensive audit of the company's business by commission accountants.

The accountants reached the conclusion that the company had been earning a return of 11.2 per cent on St. Louis operations in the year ending June 30, 1929. The commission has held that a reasonable return for a public utility is 7 to 8 per cent.

This rate of return, however, was figured on a rate base of $57,111,696 including all allowances customarily made except going value. Company officials have in the past disapproved reproduction cost as the basis of rate making, but in opposing a rate reduction they have pointed out that if their property had been valued on the reproduction cost basis, the rate base would have been at least

$90,000,000. In making a motion for a new valuation of the property before an attempt is made to reduce rates, the representatives of the company stated that they had consistently declined to take advantage of the theory of reproduction new, but that it is a fact that the supreme court has held that the commission must give consideration to fair present value in determining a rate base. In the event that the proceeding be not dismissed, the company has demanded that reproduction cost be ascertained and considered by the public service commission.

Laclede Gas Rate Appeal Argued

THE appeal by the city of St. Louis from the order of the commission granting an increase in rates to the Laclede Gas Light Company was argued in the supreme court on October 25th.

The order was entered last January and allowed the company an increase in annual revenues of approximately $750,000. This increase was sustained by Judge Henry J. Westhues in the Cole county circuit court.

The city attacked the reasonableness and lawfulness of the valuation of $47,000,000. A return of 7½ per cent on this valuation was made by the commission, and the annual depreciation rate was increased from 1 to 1.5 per cent.

The city also contends that the increase in revenue falls almost entirely on the domestic or ordinary household user.

Too Much Stress on Present Cost Is Claim of City

THE city of St. Louis has asked for a rehearing in the street car fare case of the St. Louis Public Service Company. A valuation of $63,500,000 placed upon the operating property was attacked as excessive in a motion filed in supreme court for rehearing of the case. The court had affirmed the commission's findings.

It was contended that the commission had given too much weight to the valuation theory of reproduction cost new. City Counselor Muench declared that the court had overlooked the point raised in the appeal by the city that the commission had announced the rule that in valuing the property stress should not be placed on either the original cost or reproduction cost theory. He stated that a comparison of the reproduction cost of the property, including land, as found by the commission, with the present fair value, as found by it, showed that it did put almost entire stress upon the reproduction cost and very little on the original cost.

Objection was also made to the allowance of $3,000,000 for going value. The city contends that the allowance should not exceed $2,500,000. This allowance is an estimate of the difference in value between a public utility ready to operate but with no business and one in successful operation. A steady decline in the company's business was given as a reason for objecting to an allowance in excess of $2,500,000 which was made in a former valuation in 1919.

New Hampshire

Services of Parent Organizations Explained

THE public service commission on October 28th resumed its investigation of the financial affairs of the New Hampshire Gas & Electric Company, of Portsmouth, and the Derry Electric Company, and their relations with the New England Gas & Electric Association of Massachusetts. Raymond C. L. Greer of Portsmouth, general manager of the Portsmouth property, testified in regard to the services rendered to the operating utilities by the owning association.

It was testified, among other things, that before the Utilities Purchasing and Supply Corporation, with whom the New Hampshire Gas & Electric Company has a contract for the purchasing of supplies, came into the picture, the Portsmouth company got bids directly from vendors, while now the practice is to get some bids outside. It was testified in relation to the purchase of supplies that in one case, for example, where equipment was purchased at a cost of $20,000 through the purchasing corporation, independent quotations amounted to $27,000. This one purchase, it was said, saved the New Hampshire Gas & Electric Company $7,000.

Mr. Greer explained that officials of the controlling association closely supervised the operations of the utilities. It was developed that seventeen specialists in various utility lines visit the New Hampshire properties to advise and assist in various capacities, some on their own initiative and some at the call of the general manager. He also testified in regard to the sale of appliances.

The detailed inquiry of appliance sales was left for Frank W. Randall, assistant general manager. On this point, to quote from the Boston *Transcript:*

"Randall said the usual make-up in appli-

ances was 30 per cent. He said retail prices were usually the list prices of manufacturers and explained that prior to the arrangement with the merchandising company purchases through the purchase company had gained additional discounts of from 5 to 10 per cent from vendors. He said the margin of profit was just about equal to the cost of the sales service.

"Under the present arrangement with the appliance company, Randall said the New Hampshire Gas & Electric was paid a flat commission of 2½ per cent on total sales of appliances. The appliance company also absorbed all obsolescence, repossessions, and finances and that the New Hampshire Gas & Electric was reimbursed for carrying charges. Sales approximated $100,000 a year and on that basis the commission to the New Hampshire company from the appliance corporation would approximate $2,500 a year. Attorney Wyman developed from Randall that the salaries of the sales staff handling appliances was about $7,000 a year."

New Jersey

Fight Fare Zones

Now that the Public Service has decided to return to a 5-cent fare, some agitation has been started against fare zones, particularly in Hoboken and North Hudson. Mayor William Rannenberg of Union City, according to the Hoboken *Observer*, declared that Public Service had established "unnatural fare zones." He instructed Corporation Counsel James C. Agnew to make plans for a fight against the fare zones so that people in Union City may travel on the trolleys and busses to Hoboken and Weehawken for 5 cents.

A 5-cent fare, according to some of the Civic Betterment League leaders, is only one of the objects and longer rides for 5 cents are now declared to be necessary to satisfy the leaguers.

New York

Rehearing on Brooklyn Borough Gas Rates

The Brooklyn Borough Gas Company on October 24th presented its first evidence through its own witnesses in defense of its present rates, which include an initial charge of $1 for the first 200 cubic feet of gas used. This was on a rehearing ordered by the public service commission on motions of the city and certain consumers' organizations opposing the rates. The New York *Times* informs us:

"The exhibits showed that the total fixed capital of the company as of August 31, 1929, was $7,908,007.54 and on August 31, 1930, was $8,400,360.02. The average actual working capital used for the gas business during 1929 was $639,940.37, and for the gas supplied but not billed $142,884.43, making a total of $782,824.80, as compared with a total for both gas consumed and for gas supplied but not billed during the twelve months ended August 31, 1930, of $851,198.17. The exhibits showed the net operating revenue for 1929 of $860,524.91, and for the twelve months ended August 31, 1930, of $893,327.33.

"The first eight months of 1930 showed net operating revenues of $616,277.57 as compared with $683,475.15 for the corresponding period in 1929, an increase of 5.62 per cent.

"Raymond F. Druhan, real estate broker and appraiser, offered testimony for the company to refute similar testimony of Joseph B. Milgrim for the consumers in respect to the classes of apartment houses in the company's territory in the Thirty-first ward of Brooklyn. It is the contention of the company that it serves apartment house customers at a loss, while consumers' representatives contend that the cost of serving such customers is much less than serving single-family houses."

Water Rate Increase Attacked in Court

The New York Public Service Commission has no jurisdiction over the rates of water utilities. Therefore, when the Western New York Water Company recently proposed an increase in rates, Kenmore and Tonawanda ratepayers went into the supreme court to oppose the increase. Supreme Court Justice Bernard B. Ackerman denied an injunction restraining the water company from putting the new rates into effect, but he provided that the additional charge should be collected on a separate bill, and kept in a separate fund until settlement of the controversy. If a decision is finally returned against the water company, it must make refunds to all consumers.

Judge Ackerman has appointed former Justice Charles A. Pooley as referee to hear tes-

timony. The increase proposed is from 12 to 16 cents a thousand gallons in Kenmore and from 13 to 18 cents a thousand in Tonawanda.

County Commission Demanded after Fare Proposal

ONE of the results of the recent proposal by the New York Central Lines to increase commutation rates by 40 per cent is the demand by the Boston Post Road Association and the Southern Westchester Association that a public service commission for Westchester county be created. These associations, says the New York *Times*, maintain that such a commission would enable the county to deal more effectively with public utilities and would obviate taxpayers' actions. They would prorate the cost of any rate fight among the communities directly involved.

The communities which would be affected by the increase in commutation fares have started plans for opposition. They contend that under present economic conditions a fare increase at this time is inopportune.

L. V. Vosburgh, vice president in charge of passenger traffic of the railroad, pointed out that the fares were materially lower than those in effect on any other railroad entering New York city, and that the increase sought was the first since 1918. He cited the excellence of the service. The expense of providing the commutation service is said to be in excess of the revenue derived from it. Improvements in structures and tracks during the last five years directly attributable to the demands of the commutation service have been approximately $20,000,000, he said.

Oregon

Probe of Campaign Advertising

A COMPLAINT has been filed by the Oregon State Grange that public utilities are charging against operating expense large amounts of money used in the campaign to defeat the hydroelectric district utility bill which was approved at the recent election. This complaint is under investigation by the Public Service Commission. The charges are branded as false by utility men.

Commissioner H. H. Corey, according to the Portland *Oregonian*, has declared that the utilities were not charging their campaign expenditures to be reflected in higher rates. Such a practice would be contrary to law, he said, and would not be allowed by the commission.

The Latest Utility Rulings

ALABAMA COMMISSION: *Re Alabama Utilities Co.* (*Docket 5804.*) On January 6, 1930, this company asked for a certificate of approval to build a transmission line 30 miles long from Conecuh county served in the vicinity of Frisco City, together with substations, and other incidental appurtenances. On July 3, 1930, the commission found that the territory could be served cheaper if the applicant bought its current wholesale from another utility in the vicinity instead of transmitting it 30 miles from its own power station. The commission did not specifically order the applicant to use this method, but ruled that it would fix rates in accordance with the most economical method of service regardless of the method actually employed by the company. Last September the applicant company asked for permission to construct its own generating system at Frisco City. Approval was given in this proceeding to this third alternative method when it was alleged that annual production cost would be about $7,915.90, as compared with $9,006.17, the estimated wholesale cost of the energy required. The commission experts were in doubt, however, as to whether the applicant's plan will ultimately prove to be more economical than the purchase of wholesale power, and accordingly the commission attached its former rate schedule as a condition for the exercise of the authority granted.

ALABAMA COMMISSION: *Re Alabama Utilities Service Co. et al.* (*Docket 5985.*) The commission approved of proposed rates for natural gas service for the cities of Anniston, Gadsden, Tuscaloosa, Selma, Montgomery, and Mobile. The commission signified its accord with the company's efforts to increase the use of gas among industrial consumers through the introduction of natural gas, but suggested that the company's initial rate for domestic consumers of $1.25 should be made to cover a minimum of 300 cubic feet, instead of 200 cubic feet, in order to favor small consumers and thus improve public relations.

ALABAMA COMMISSION: *Re Birmingham Electric Co.* (*Docket 6031.*) Application for authority to abandon street railway service on a route of the Irondale and Gate City car line of the applicant, and to substitute bus

service, which will cost about $25,000 to establish, was approved. The commission stated that aside from the question of improved service, the abandonment of the street railway line would be of considerable benefit to the public generally in permitting the improvement and widening of the highway in accordance with the municipality's paving program and the facilitation of traffic generally.

ALABAMA COMMISSION: *Re Birmingham & Southeastern Railroad Co.* (*Docket 6029.*) In an effort to cope with the competition of motor carriers, the railroad company petitioned for authority to establish, for an experimental period, store-door delivery service on less-than-carload freight at Tallassee. (*See Utilities and the Public, page 698.*)

CALIFORNIA COMMISSION: *Re Hinman.* (*Decision No. 22925, Application Nos. 16825, 16826, 16827.* In granting authority to H. L. and Effie H. Hinman, operating as the Merchants Express & Draying Company, to transfer warehouse properties to the Oakland Warehouse Terminals Company in return for $6,500 worth of common stock, the commission said that it would refuse to authorize security issues of public utilities for the purpose of financing working capital, in the absence of evidence showing to what extent, if at all, the applicant had need of working capital.

CALIFORNIA SUPREME COURT: *San Diego & Coronado Ferry Co. v. Automobile Ferry Co.* A public utility which allows its service to run down "until competition knocks at the door" is not entitled to protection against competition, according to a ruling by the court in sustaining an order of the state commission granting a certificate of convenience and necessity to the applicant to operate a public ferry across San Diego bay in competition with the existing service of the San Diego & Coronado Ferry Company.

ILLINOIS APPELLATE COURT: *East St. Louis Light & Power Co. v. Swift & Co. et al.* (*258 Ill. App. 327.*) The defendant a nonutility packing company was held not to be violating state public utility laws by selling surplus electricity generated by its own generators under contract to a neighboring industry. The court refused to grant an injunction requested by the plaintiff electric utility against such practice.

ILLINOIS COMMISSION: *Re Sparta Telephone Co.* (*No. 19938.*) Increased rates were proposed to take care of a conversion of the Sparta telephone exchange from magneto to common battery service. The value of the plant when converted will be $75,000. The proposed rates, which were approved, will yield approximately 6.9 per cent return on that amount, whereas the rates previously in effect yielded only 2.6 per cent return.

INDIANA COMMISSION: *Re Southern Indiana Telephone & Telegraph Co.* After rescinding its previous order postponing consideration of proposed rate increases for thirty rural exchanges because of the present economic depression, the commission has denied the proposed rate increase upon its merits. The commission attacked the company's statement of operating expenses as containing "most flagrant extravagances," especially with regard to the salary of certain officials.

LOUISIANA COMMISSION: *Commission v. Southern Bell Telephone & Telegraph Co.* (*No. 1359, Order No. 750.*) After numerous complaints against the adequacy of telephone service of the magneto type now rendered at Crowley, Louisiana, the company was ordered to install a common battery exchange system.

LOUISIANA COMMISSION: *Re Rates for Transportation of Freight by Motor Vehicles.* (*No. 1387, Order No. 751.*) Uniform rates for all motor carriers of freight were adopted. (*See Utilities and the Public, page 698.*)

MARYLAND CIRCUIT COURT OF BALTIMORE CITY: *Sun Cab Co. v. Public Service Commission.* An order of the commission requiring a taxicab company to make proper provisions for public liability insurance was vacated, the court being of the opinion that the commission had exceeded the powers granted to it by the legislature. (*See Utilities and the Public, page 698.*)

MISSOURI COMMISSION: *Lefferty et al. v. St. Louis Public Service Co.* (*Case No. 6886.*) A complaint against the discontinuance of a car stop was denied in view of the company's attempt to speed up service, but it was ordered to light up an alleyway used by the complainants in order to reach the nearest station to their homes under the skip-stop plan.

MISSOURI COMMISSION: *Re Phillips Pipe Line Co.* (*Case No. 7144.*) Application of a pipe line company, a Delaware corporation, for a certificate of convenience and necessity to construct a pipe line across the state of Missouri for operation in interstate commerce was dismissed for lack of jurisdiction.

MISSOURI SUPREME COURT: *Wiles-Chipman Lumber Co. v. Union Electric Light & Power Co.* A verdict for treble damages awarded against an electric company for violation of an antitrust law was reversed in view of the existence of the public service commission for the correction of the injuries claimed. (*See Utilities and the Public, page 698.*)

MISSOURI SUPREME COURT: *St. Louis v. Missouri Public Service Commission.* On appeal from an order of the Missouri commission fixing the valuation of the St. Louis

street car system at $66,000,000, for rate-making purposes, the commission's findings of value and its rate orders based thereon were sustained.

NEBRASKA COMMISSION: *Re Missouri Valley Gas Co.* (*Resolution No. 119.*) This was an investigation instituted by the commission on its own motion into the practices of certain agents of the Missouri Valley Gas Company which is attempting to secure right of way for the construction of a pipe line in the vicinity of Gage and Jefferson counties. (*See Utilities and the Public, page 698.*)

NEW YORK PUBLIC SERVICE COMMISSION: *Re Eastern New York Utilities Corp.* (*Case No. 6326.*) The Eastern New York Utilities corporation, formerly operating an electric railway between Hudson and Rensselaer, was granted authority, as required by New York law, to sell the right of way and other real property in connection with the railway to the New York Power & Light Corporation for the sum of $264,600. The physical property will be sold to dealers as junk for their salvage value. This is the final step in the dissolution of a company no longer engaged in rendering public utility service.

NEW YORK PUBLIC SERVICE COMMISSION: *Re Buffalo Transit Co.* (*Case No. 6360.*) Application for a certificate of convenience and necessity for the operation of a motor bus route through the city of Buffalo, town of Amherst, and the village of Williamsville, was granted, notwithstanding the fact that it duplicated, over a portion of the route, the existing service of the International Railway Company. The commission decided that the proposed service would better serve the public's convenience without transferring from bus to trolley in inclement weather with the consequent delay. While there would be some loss to the railway because of the added new service, it was not shown that such loss would jeopardize, or seriously impair the railway's existence.

NEW YORK PUBLIC SERVICE COMMISSION: *Re Delaware & Hudson Railroad Corp.* (*Case No. 6150.*) Upon rehearing the commission rescinded an order given April 17, 1930, granting to the railroad company the right to abandon passenger train service on its Ausable branch, serving the vicinity of Ausable Forks, New York. The commission found that, while the operations would not be profitable, the company's operations as a whole were profitable, and that, in view of the serious inconvenience caused to residents in the territory affected, the service should be restored.

NEW YORK PUBLIC SERVICE COMMISSION: *Re New York Telephone Co.* (*Case No. 6349.*) Upon observing the inconsistencies of long-distance rates of the New York Telephone Company within New York state as compared with the rates of the American Telephone & Telegraph Company over comparable distances in interstate service, the commission ordered the New York Company to accept the American Telephone & Telegraph rates as a guide until it should be prepared to defend the inconsistencies of its own rates. Specific examples of such inconsistencies were pointed out: the rate on a call from New York to Buffalo is $1.90, while the rate for a call from Newark, New Jersey, to Buffalo is $1.30; a call from Albany, New York, to Washington, District of Columbia, costs $1.45, while a call from Albany, New York, to Rochester, New York, is $1.35.

NEW YORK PUBLIC SERVICE COMMISSION: *Re Niagara Hudson Power Corp.* (*Case No. 6414.*) Petition of the Niagara Hudson Power Corporation for consent to acquire all of the outstanding capital stock of the Baldwinsville Light & Heat Company (Onondaga county) was approved. The price to be paid is 50 per cent of the par value of the stock purchased, and if all stock is purchased the total purchase price will be $50,000.

PENNSYLVANIA COMMISSION: *Ruttle, et al. v. Cheltenham & Abington Sewerage Co.* (*Complaint Docket Nos. 8075, 8076, 8078, 8079, 8081, 8083, 8084.*) Rates were ordered for sewerage service calculated to yield a return of approximately 7 per cent on the fair value of the utility's sewerage property, which was fixed for rate-making purposes at $285,000. The proceeding was the result of complaints by various patrons against the increased schedule of rates placed into effect by the company July 1, 1929. The complaints were sustained and reduced rates were ordered. The sewerage utility was not permitted to include in its rate base the value of storm sewers which it had permitted to municipalities to operate without protest for over thirty years.

PENNSYLVANIA SUPERIOR COURT: *Hoffman et al. v. Pennsylvania Public Service Commission.* (*No. 376.*) Appeal by certain taxi drivers from an order of the commission refusing to grant certificates of convenience and necessity for additional taxicab service in the city of Philadelphia was decided in favor of the commission. (*See Utilities and the Public, page 698.*)

RHODE ISLAND COMMISSION: *Re United Electric Railways Co.* (*No. 237.*) Authority was given for the discontinuance of trolley service between Providence and Woonsocket in view of the apparent preference of the public for bus service, which the commission has already authorized to be substituted.

NOTE.—The cases above referred to will be published in full or abstracted in *Public Utilities Reports.*

The Utilities and the Public

Are Antitrust Laws Applicable to Utilities?

BACK in the "trust-busting" days of the late nineties, before the principle of commission regulation for public utility companies was established, certain so-called antitrust statutes were enacted for all businesses including, of course, public utility businesses. These laws are still on our Federal and state statute books but whether they still apply to public utilities (or if so, the extent to which they apply) still remains a fruitful cause for litigation.

Unquestionably, the modern development of commerce generally has made these statutes in a measure inapplicable to present-day business conditions. If there are one hundred houses on a certain city block, for instance, served by ten competing milk companies, each having ten customers, it is obvious that there are nine drivers, nine wagons, and nine horses unnecessarily going up and down that street every morning disturbing the rest of the residents. It is obvious that a reasonable and fair territorial agreement would not only be cheaper and better for the companies, but for the public as well.

Such situations as these caused the late Chief Justice White to modify the scope of antitrust statutes by his famous "rule of reason." But how much more forceful is the argument for coöperative agreement between competitors in the sphere of public utility service, which is of its very nature economically monopolistic? A number of courts appear to have ruled that the establishment of commission regulation by the several states did away with all application of antitrust laws to utilities. Instead of forcing utilities to fight each other to the disadvantage of both, the legislature, such decision holds, intended to protect the monopolies of the utilities by placing them under the supervision and control of the regulatory commission.

Missouri has an antitrust statute which awards treble damages against the violator of the law to anyone injured by such violations. Back in 1918, the Wiles-Chipman Lumber Company of St. Louis asked for electric service from the Laclede Gas Light Company. This company refused the application, stating that the capacity of its plant could not carry the additional load. The lumber company was compelled to take service from the Union Electric Light & Power Company. The latter's rates were higher than the Laclede Company's rates so that the lumber company estimated that it paid about $6,173 more to the Union Company than it would have had to pay to the Laclede Company.

The lumber company sued the Union Company for treble damages under the antitrust law and obtained a verdict in lower court for $33,920. It claimed that the Union Company entered into a secret agreement with the superintendent of the Laclede Company, who was paid $150 to refuse additional industrial business, thereby driving it to the Union Company. The officers of the Union Company and the North American Company, its parent, denied knowledge of the conspiracy and disclaimed liability for the alleged action of the employees involved.

Recently the supreme court of the state has reversed this verdict but a good deal of legal fog remains. While holding that enactment of the public service commission law modified the application of antitrust laws to public utilities to an extent "not clearly defined," the court ruled that the lumber company should have proceeded under the public service commission law, rather than the state antitrust law.

All of which still leaves unanswered

the question of whether antitrust laws are applicable to utilities and if so how much. Some day our lawmakers will probably settle the question by clear legislative mandates, but until then expensive law suits, such as the Union Electric Company case, will continue to clutter up our court dockets.

Are Utilities Responsible for Regulatory Violations of Employees?

THE foregoing controversy over an alleged conspiracy between employees of two utilities to violate the state antitrust laws raises another interesting question as to the responsibility of utility companies for the acts of their agents or employees in violating regulatory restrictions.

It is a settled rule of law that, as to civil matters such as rights arising out of contracts or damage claims for bodily or property injuries, an employer, whether a utility corporation or any other kind of corporation, is liable for all acts of its agents while they are acting within the apparent scope of their employment. That is why a department store had to pay for personal injuries sustained by one pedestrian negligently run down by one of its delivery trucks during business hours, but did not have to answer for injuries sustained by another victim of one of its trucks operated after business hours by a driver who used the vehicle without its authority to keep a social engagement of his own.

This strict rule of common law goes by the classic name of *"respondeat superior."* Is it applicable to violations of regulatory law? Do the commissions punish utilities for infractions of regulatory rules committed by their employees in the apparent scope of their employment, even in the absence of the knowledge or consent of the utility?

It is a nice point and there have been but few cases on it. There have been enough, however, to warrant the conclusion that regulatory law is much more liberal with utilities in applying the doctrine of *respondeat superior.* A typical example occurred in Missouri several years ago when drivers on certain interstate bus lines commenced to cut rates and violate commission restrictions against doing local business.

In these cases the Missouri commission formulated the doctrine that where the utility employer knows or should, by ordinary exercise of diligence, have known of the offenses, he will be compelled to answer for them. Thus one certificate of convenience and necessity was refused where the commission found that the bus management must have known of certain regulatory abuses committed by its drivers.

In an Indiana case, on the other hand, the bus management was relieved from responsibility for the acts of its drivers in refusing to stop for or allow colored passengers to board their coaches, where it was shown that such practice was without its knowledge or consent.

A more recent case comes from Nebraska where the commission has investigated the practices of the Missouri Valley Gas Company, which is attempting to secure right of way for the construction of a pipe line in the vicinity of Gage and Jefferson counties. Numerous complaints had reached the commission that the company's agents were securing contracts for the right of way by representing that the commission had fixed a price at 25 cents per lineal rod, whereas the company has never been before the commission for any purpose whatsoever. The commission condemned the practice but refused to institute contempt proceedings upon evidence that the guilty agents had been discharged and that the company was trying to make amends for any injury done.

In this case the pipe line company disclaimed all knowledge of the fraudulent

acts of its agents up until a short time before the inquiry. The Nebraska commission apparently took the company's word for it.

The Indiana Commission Has No Authority to Fix Uniform Gas Standard

A RECENT opinion of the attorney general for Indiana promises to have a very important bearing upon the powers of the commission in that state if it should be sustained. In a word, the opinion holds that the Indiana commission has no authority to declare void or set aside a franchise agreement between a municipality and a gas utility, concerning a service supply which does not conform to a uniform heating standard fixed by the commission.

Back in 1920, the Indiana commission fixed the uniform heating standard for gas furnished by utilities in that state at a minimum calorific content of 570 B.T.U. Recently an Ohio company offered to furnish service to the town of Butler, Indiana, located 4 miles from the Ohio-Indiana line, at 500 B.T.U. The town wanted to grant the franchise but asked the commission if it would approve of this exception to the general rule. The commission in turn asked the advice of the state attorney general. First, could the town lawfully grant a franchise for 500 B.T.U. service? Secondly, could the commission approve of this particular exception to its own general order?

The answer of the attorney general is so sweeping that it not only rules that the commission's approval of the franchise is unnecessary, since the commission could not interfere with the franchise even if the latter was thought undesirable, but the opinion even indicates that the Indiana commission has no lawful authority to fix any general B.T.U. restrictions for utility gas service throughout the state.

After reviewing various passages of Indiana law, the attorney general found as follows:

> "First that the commission may prescribe standard commercial units, second, ascertain and fix adequate standards for the measurement of such units, and third, establish rules and regulations for securing the accuracy of meters and appliances for such measurement, but I find no provision or authority for the establishment by the commission of a uniform standard of 570 B.T.U. for gas furnished the people of Indiana.
>
> "My conclusion and opinion, therefore, is that only in so far as § 110 (giving the commission power to declare "unreasonable" franchises void), is applicable, has the public service commission authority to declare void the franchise of the Ohio company if granted by the town of Butler."

This opinion, offhand, appears somewhat surprising. Apparently the commission could declare a franchise void as "unreasonable" if the rates fixed were either too high or too low, but the commission may not vacate a franchise if the quality of service rendered does not measure up to fixed standards for adequate service. The attorney general, it would seem, does not believe adequate service is as important as reasonable rates. Decisions in other states do not appear to be in accord with this position.

Two Important Taxicab Decisions

Two important decisions from the neighboring states of Maryland and Pennsylvania seem to have opposite results on the movement toward regulation of the taxicab in these respective commonwealths.

The Maryland ruling would appear to deny the right of the Free state commission to require cab operators to file security by way of liability insurance or reserve funds for the payment of damage claims. Maryland's law on this sub-

ject is rather broad. It gives the commission power over the rates and service of all common carriers.

Acting on the advice of its distinguished general counsel, former United States Senator W. Cable Bruce, the commission assumed that its authority to require cab companies to file public liability protection was implied in these general powers and ordered several companies, including the Sun Cab Company, to make the necessary arrangements.

The Sun Cab Company appealed. The latest development is a decision by Judge Solter of the circuit court of Baltimore City reversing the Maryland commission's order and holding it to be without delegated power to tie up a taxicab operator's funds in this manner. If Judge Solter's decision is sustained by the Maryland Court of Appeals, there is immediate need for a law giving the commission the requisite authority in this regard. The day is apparently past when the public will tolerate the operation of irresponsible public vehicles on our congested highways.

From the Keystone state comes more cheering news for taxicab regulation. It appears that a superior court in Philadelphia has sustained an order of the Pennsylvania commission refusing to grant certificates of convenience and necessity for additional taxicab service in the city of Philadelphia. This appeal was taken by the unsuccessful applicants for taxicab certificates. The commission's order was based on the fact that adequate taxicab service already existed in the city of Brotherly Love.

This is one of the first few court rulings that supports the state commissions in their attempt to clear up the chaotic transportation and traffic conditions existing in so many of our cities as the result of unnecessary competition by taxicab operators.

Regulation of Motor Trucking Moves Forward

THE motor trucking industry in this country is fast approaching a position of prime importance in the regulation of transportation service. Twenty—even ten years ago trunk railroads and interurban railways laughed at the idea that the carriage of freight by motor could ever offer serious competition to rail lines. Now Congress debates the necessity for legislation for the regulation of interstate motor carriers such as the proposed Parker Bus Bill; the Interstate Commerce Commission plans extensive hearings during the coming year on motor trucking competition with rail lines, while state commissions throughout the country are grappling with the problem of intrastate motor carriage.

So far, bus and motor freight transport has demonstrated its efficiency only over distances limited to 150 miles. This means short-haul competition for the rail lines. But even in this limited field motor carrier competition is giving many railroad operators sleepless nights.

An excellent example of how serious some railroads are taking motor carrier competition is shown by the recent petition of the Birmingham & Southeastern Railroad Company before the Alabama commission for authority to establish its own store-door delivery service by motor trucks for less-than-carload freight at Tallassee. This is the first time, according to the commission, that such a petition has ever been brought before it.

The move is an obvious attempt of the rail carrier to cope with the competition of independent motor carriers. The commission ruled that as long as the proposed operations are confined to the terminal area of Tallassee, a certificate of convenience and necessity would not be required, and that the commission would not interfere with the inauguration of the service. It was pointed out, however, that once it was established, the commission would have authority to regulate and supervise such service by virtue of its general powers over the rules, regulations, practices, and services

of common rail carriers as outlined in the statutes.

Slipping further down into Dixie we find that the commission of Louisiana has been doing big things in the way of motor carrier regulation. It has decided that if the increasingly important motor trucking industry is to thrive and survive, some degree of uniformity in the matter of rates must be achieved and a rigid adherence to prescribed schedules observed.

The Louisiana commission concluded in its recent Order No. 751 that, generally speaking, motor carriers cannot afford to operate at less than corresponding all-rail rates, especially in view of the pick-up and delivery service which they render. Accordingly, all motor carriers in Louisiana transporting freight were ordered to abide by the commodity rail rates now in effect for railroads in that state.

As far as rail freight rates are concerned, Louisiana is divided into two sections. In its western areas the Mississippi River Western Classification rates apply. In the eastern area the Southern Classification rates apply. Motor carriers were ordered to adopt the particular classification applicable to rail carriers in the territory where they operate. The commission indicated that it may subsequently modify particular rates for motor carriers if evidence and experience should warrant such action.

And so it seems that we are slowly but surely approaching the time when regulation of transportation, whether by rail or rubber, will be exercised under a policy calling for coöperation and coördination.

Flat Rate Taxis Banned in Connecticut

A TAXICAB decision of the first magnitude has been handed down by the Connecticut commission that will be effective in all the principal cities of the Nutmeg state. In a word, this ruling holds that the flat rate system of fares for taxicab service places an undue burden on the short haul passengers and is a discrimination in favor of the long haul passenger. Accordingly, all taxicab operators are now required to establish meter rates.

The commission commented on the flat rate system as follows:

> "The patron who is carried a long distance under the flat method of charge ordinarily obtains the advantage of cheaper transportation than he could obtain if the taxicab were equipped with a taximeter. This advantage, however, is obtained at the expense of the flat rate passenger traveling a short distance.
>
> "It appeared also from the evidence that the existence of these dual methods of charge side by side in the same community has resulted in destructive competition which, if continued over a period of time, may reasonably be expected to deteriorate the equipment used in the service and thereby affect the safety of transportation rendered. One of the results of public regulation should be the prevention of destructive competition with all its harmful consequences. . . .
>
> "The industry is protected against unnecessary additional competition by a finding of public convenience and necessity, thereby limiting the number of taxicabs to be operated, and the industry should protect itself against destructive rate competition by a friendly spirit of coöperation, operating on a fair competitive basis at such reasonable rates as will assure safe and dependable service."

This ruling gives rise to the question of whether, if rate cab fares are unlawfully discriminatory against the short haul patron, flat rate street railway and bus fares now so universal are not equally discriminatory. One defense might be that a street car fare is so small an amount that zone rates (which would be the only possible street railway equivalent for metered cab rates) would be impracticable in most cities.

In any event, the Connecticut ruling is important as establishing a possible precedent that other commissions may follow when they come (as they inevitably will come) to consider the question of eliminating chaotic competitive conditions of our average metropolitan transportation facilities.

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 1930E NUMBER 4

Points of Special Interest

These official reports are published annually, in their entirety, in five bound volumes, with the Annual Digest, at the price of $32.50 for the set. These volumes, together with a year's subscription to PUBLIC UTILITIES FORTNIGHTLY, *will be furnished for $42.50.*

Titles and Index

TITLES

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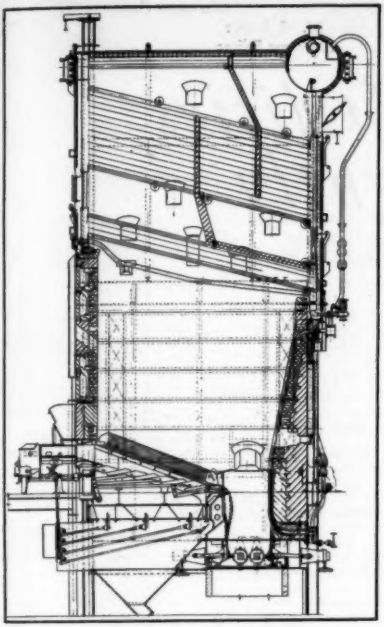
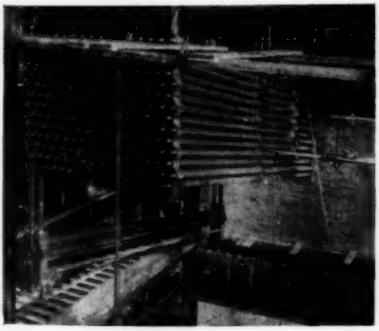


Sectional elevation of new Spokane Unit.



View of Walsh-Weidner boiler being assembled.

New Spokane Unit to equal output of six boilers now in use

The output of the steam generating unit now being installed at the Spokane Central Heating Company plant will equal the output of six boilers now in use and occupying three times the building volume.

The boiler is a Walsh-Weidner cross drum, straight tube, sectional header type, designed for 250 lb. pressure and contains 15,000 sq. ft. of heating surface.

The stoker is a twelve retort C-E Multiple Retort machine, 31 tuyeres long.

The front and side walls of the furnace are air-cooled and the rear wall to the bottom of the clinker pit is of the C-E Water-cooled Wall construction.

The design of this unit is noteworthy as it involved fitting into the space available a unit capable of producing a large output, plus reliability of operation.

COMBUSTION ENGINEERING CORPORATION

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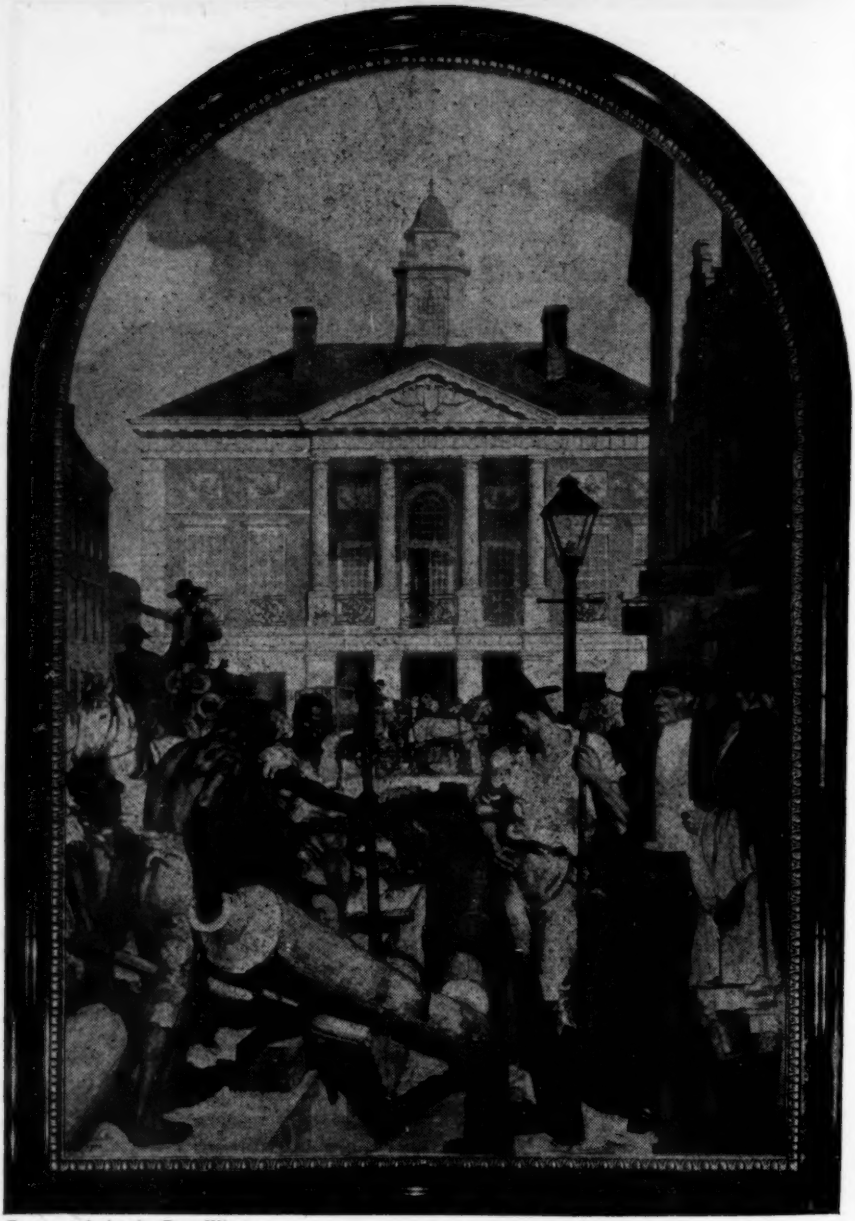
DECEMBER

Reminders of Coming Events — **ALMANACK** — *Notable Events and Anniversaries*

11	T^h	In an effort to speed up postal communication in the U. S. A., a street railway mail car was put into service in St. Louis; 1892.
12	F	Transatlantic radio communication was started when MARCONI succeeded in transmitting the letter "S" from Cornwall, England, to Newfoundland; 1901.
13	S^a	The use of "steam propelled carriages for quickened service across the continent" was the "absurd" idea urged by ROBERT MILLS of Virginia; 1819.
14	S	DR. JOHN CLAYTON, a Yorkshire minister, conducted experiments with gas found in "a shelly coal" near Wigan, England; 1660.
15	M	Stone & Webster, the engineering concern identified with utility projects, consolidated with Blodget & Co., forming a $10,000,000 corporation; 1926.
16	T^u	Franchises were obtained by the Pennsylvania Railroad for building tunnels under the North and East rivers for expediting traffic into New York; 1902.
17	W	Directors of the Utica and Schenectady Railroad boldly voted to order "heavy iron rails, weighing not less than 60 pounds per yard;" 1845. JOSEPH HENRY born, 1797.
18	T^h	The announcement of a $100,000,000 issue of Chicago, Milwaukee & St. Paul Railroad stock caused a collapse on the New York stock market; 1906.
19	F	A charter was granted to the South Carolina Canal and Railroad Company; 1827. New York, New Haven & Hartford Rd. opened; 1848.
20	S^a	Residents of New York gazed in wonderment upon the first electric lights ever employed for illuminating the city's streets; 1880.
21	S	The Interstate Commerce Commission handed down its plan for consolidating the nation's railroads into twenty-one systems; 1929.
22	M	JOHN WESLEY, founder of Methodism, expounded in his remarkable book the divine powers of electricity for mending both physical and moral ailments; 1759.
23	T^u	The first marked revival of interest in public service projects after the Revolution was the establishment of the Baltimore Water Company; 1792.
24	W	The first flashing danger signals for grade crossings were installed on the New Canaan branch of the New Haven Road; 1921. ¶ *Christmas Eve.*

"Science and art belong to the whole world, and before them vanish the barriers of nationality."

—GOETHE



From a painting by Ezra Winter

In the Public Service

An historic event in old New York; laying the first water mains (made of logs) in the city streets, 1800.